Supreme Court, U. S.
FILED
AUG 13 1975
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term 1974

No. 75-235

G. M. LEASING CORP., and
GEORGE I. NORMAN, III,

Petitioners,

v.

THE UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, ROLAND V. WISE, District Director, JAMES M. LIVSEY, JOHN W. HAACKE, GLENN S. HILTON, KEITH E. FINLEY, JR., CLARK D. HOLFELTZ, JOSEPH J. WHITE, CLESSE S. HILTON, BURT C. APPLEGATE, ROLAND P. HARRINGTON, TIM W. ELISON, LAWNIE C. MAYHEW, THOMAS L. HARKNESS and PHILIP J. CLAYTON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

RICHARD J. LEEDY
309 Newhouse Building
Salt Lake City, Utah 84111
Attorney for Petitioners

TABLE OF CONTENTS

Page

OPINION BELOW 2

JURISDICTION 2

QUESTIONS PRESENTED 2

STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 6

REASONS FOR GRANTING THE WRIT 10

1. THE DECISION OF THE TENTH CIRCUIT COURT OF APPEALS IS IN CONFLICT WITH DECISIONS OF OTHER CIRCUITS AS TO THE PRESUMPTIVE EFFECT OF AN INTERNAL REVENUE SERVICE JEOPARDY ASSESSMENT 10

2. THE DECISION BELOW REGARDING THE CONDUCT OF THE RESPONDENTS IS CONTRARY TO THE FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND RELEVANT DECISIONS OF THIS COURT 14

Page

3. THE DECISION OF THE TENTH CIRCUIT COURT OF APPEALS THAT THE PETITIONER WAS THE ALTER EGO OF THE TARGET TAXPAYERS AND THE JUDGMENT RENDERED THEREON SHOULD BE REVERSED WITH AN OPPORTUNITY FOR THE PETITIONERS TO PRESENT ADDITIONAL EVIDENCE ON THE ISSUE .. 17

CONCLUSION 19

APPENDIX (Opinion of Court of Appeals, Findings of Fact, Conclusions of Law, and Judgment of the District Court) A-1

CITATIONS

CASES:

Bar L. Ranch, Inc. v. Phinney, 426 F.2d 995 (5th Cir. 1970) 13

Bevins v. Six Unknown Named Agents, 403 U.S. 388 (1971) 14

United States v. Bischeglia, ...U.S....., 95 S.Ct. 915 (1975) 16

Camara v. The Municipal Court of San Francisco, 387 U.S. 523 (1967) 15

Coolidge v. New Hampshire, 403 U.S. 443 (1971) 15

Foster v. CIR, 391 F.2d 727 (4th Cir. 1968) 11

Fuentes v. Shevin, 407 U.S. 67 (1972) 16

Page

United States v. Lease, 346 F.2d 696 (2nd Cir. 1965) 12, 13

North Georgia Finishing, Inc. v. Di-Chem, Inc., ... U.S. ....., 95 S.Ct. 719 (1975) 16

Phelps v. United States, ... U.S. ....., 95 S.Ct. 1728 (1975) 16

United States v. Rexach, 482 F.2d 10 (1st Cir. 1973) 12

United States v. Rindskopf, 105 U.S. 418 (1881) 11

See v. City of Seattle, 387 U.S. 541 (1967) 15

Silverthorne Lumber Co., Inc. v. United States, 251 U.S. 385 (1920) 16

Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) 16

Wong Sun v. United States, 371 U.S. 471 (1962) 16

STATUTORY MATERIAL

Federal Rules of Appellate Procedure
Rule 40 2

Federal Rules of Civil Procedure
Rule 41 (b) and (c) 18

United States Code, Title 26
§ 6321 3

§ 6331 (a) (b) 3, 15, 16

§ 6861 (a) 4, 10

	Page
§ 7403 (a) (b) (c)	5
§ 7426 (a) (1)	6
United States Code, Title 28 § 1254 (1)	2
United States Constitution Fourth Amendment	14, 15

In the Supreme Court of the United States

October Term 1974

No. .....

G. M. LEASING CORP., and
GEORGE I. NORMAN, III,

Petitioners,

v.

THE UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, ROLAND V. WISE, District Director, JAMES M. LIVSEY, JOHN W. HAACKE, GLENN S. HILTON, KEITH E. FINLEY, JR., CLARK D. HOLFELTZ, JOSEPH J. WHITE, CLESSE S. HILTON, BURT C. APPLEGATE, ROLAND P. HARRINGTON, TIM W. ELISON, LAWNIE C. MAYHEW, THOMAS L. HARKNESS and PHILIP J. CLAYTON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioners G. M. Leasing Corporation and George I. Norman, III, respectfully pray that a writ

of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit entered in this proceeding on May 1, 1975.

OPINION BELOW

The opinion of the Court of Appeals has been published in 514 F.2d 935 and appears in Appendix hereto. No opinion was rendered by the District Court for the District of Utah. The Findings of Fact, Conclusions of Law, and Judgment of the District Court appear in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Tenth Circuit was entered on May 1, 1975. A timely petition for rehearing was filed pursuant to Rule 40, Federal Rules of Appellate Procedure and suggestions for rerearing *en banc* on May 13, 1975. The petition for rehearing and suggestions for rehearing *en banc* were denied on June 17, 1975, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether assessments and tax levies made by the United States against a taxpayer should have been voided.

2. Whether tax agents of the United States acted

illegally in seizing automobiles and documents in violation of the petitioner G. M. Leasing Corporation's Fourth Amendment rights under the Constitution of the United States.

3. Whether the petitioner G. M. Leasing Corporation was the alter ego of a non-party taxpayer where property was seized from G. M. Leasing Corporation to satisfy taxpayers' alleged liabilities.

STATUTORY PROVISIONS INVOLVED

United States Code, Title 26:

§ 6321. *Lien for taxes.*

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

§ 6331. *Levy and distraint*

(*a*) *Authority of Secretary or delegate.*—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy

may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia. or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(*b*) *Seizure and sale of property.* — The term 'levy' as used in this title includes the power of distraint and seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

§ 6861. *Jeopardy assessments of income, estate, and gift taxes.*

(*a*) *Authority for Making.*—If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213(a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof.

§ 7403. *Action to enforce lien or to subject property to payment of tax.*

(*a*) *Filing.*—In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegates, at the request of the Secretary or his delegate, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability.

(*b*) *Parties.*—All persons having liens upon or claiming any interest in the property involved in such action shall be made parties thereto.

(*c*) *Adjudication and Decree.* — The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States. If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary or his delegate directs.

§ 7426. *Civil actions by persons other than taxpayers.*

(*a*) *Actions permitted.*—

(1) *Wrongful levy.*—If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary or his delegate.

STATEMENT OF THE CASE

G. M. Leasing Corporation, petitioner, brought suit against the respondents for alleged wrongful levy and seizure of assets of G. M. Leasing Corporation seeking multiple forms of relief. The United States counterclaimed for forfeiture of the seized property. The facts giving rise to petitioners' complaint and findings of the trial court which support the granting of this petition are set forth below.

On March 19, 1973, the respondents made assessments of income tax due and owing for the years 1970 and 1971 against George I. Norman, Jr., and Frances M. Norman, neither of whom are parties to this action (II-R-66). On the same day, it was determined that the collection of taxes against the named individuals was in jeopardy and an assessment was issued (II-R-66-67).

Thereafter, some of the respondents entered the garage and building at 4751-53 Holladay Boulevard, Salt Lake County, State of Utah. They did not have a search warrant or summons. The offices were those of G. M. Leasing Corporation and the residence of George I. Norman, III, who later intervened in this action (I-R-14, 46 and 49). The respondents gained admission to the garage and house at the above address by breaking locks (I-R-15, 16). The respondents subsequently became concerned that they were exceeding their authority and left the premises (I-R-19-21). Two days later, the respondents made a decision to again enter the premises and did so searching the premises and seizing assets and books of G. M. Leasing Corporation and the mentioned named taxpayers (I-R-19-22). Subsequently, eight automobiles and a bank account belonging to G. M. Leasing Corporation and certain stock belonging to the intervenor, George I. Norman, III, were seized (I-R-22, 31-34). That portion of the judgment of the Tenth Circuit upholding the trial court's determination that 7,000 shares of seized stock should be returned to the intervenor is not in issue. Subsequently, respondents went to the home of the intervenor and through threats and intimidation gained entrance and searched the premises (I-R-50-51). After the filing of the suit in the instant case, books and records seized belonging to the plaintiff and intervenor were returned but photostated copies were made and retained (I-R-34). Further, the photostats were apparently turned over to the F.B.I. for investigative purposes (Supplemental Memorandum of Appellants, 10th Circuit, p. 2).

Trial on petitioner's complaint, complaint and intervention, and the United States' counterclaim was held in the United States District Court for the District of Utah. The trial court found that the plaintiff, a Utah corporation, and the individual intervenor were entitled to judgment against the named defendants. The trial court found that on the 23rd day of March, 1973, the named employees of the Internal Revenue Service forced entry of the premises at 4751-53 Holladay Boulevard, Salt Lake County, for the purpose of searching for books and records as evidence against the aforementioned taxpayers, not parties to the instant action, and that a second search and seizure took place on the 25th day of March, 1973. The Court also found, which is not in dispute, that no search warrant for such entry nor summons was issued, and that the entry was intentional with the defendants knowing full well that they were violating the rights of G. M. Leasing Corporation and the intervenor. The District Court also found that certain automobiles and stock were seized and that the seizures were pursuant to the jeopardy assessment made by the Internal Revenue Service against George I. Norman, Jr., and Frances Norman. The District Court further found and the Tenth Circuit agreed that the reason for the seizures was the respondents' belief that the petitioners were alter egos, nominees, and transferees of the taxpayers previously mentioned. The District Court found that the assessment did not include proper credits for tax payments, business expenses, and

included income not attributable to the before-mentioned non-party taxpayers and that the assessment was erroneous and no liability for Federal income taxes of the taxpayers was proven. The District Court further determined that petitioner, G. M. Leasing Corporation, was not the alter ego of the taxpayers. The District Court ordered the return of the seized records, destruction of duplicated copies of records, return of the seized automobiles and ordered an award of punitive damages against the defendant, Philip J. Clayton, leaving the amount to be subsequently determined. A counterclaim for foreclosure of the United States was ordered dismissed.

On appeal, the Tenth Circuit determined that the findings that the petitioner, G. M. Leasing Corporation, was not the alter ego of the taxpayers was erroneous. It was further determined that a jeopardy assessment was properly made and was presumptively correct and the petitioners had the continuing full burden to prove the error of the assessment. The court further found that the seizure of the items was not unconstitutional and voided the award of punitive damages against the aforementioned named defendant. The Court of Appeals in effect voided the trial court's findings on three major issues: First, the petitioner G. M. Leasing Corporation was not the alter ego of the jeopardy taxpayers; second, that the jeopardy assessment, although admittedly containing error, was entitled to stand; and third, that the actions of the named defendants did not violate any constitutional rights of the petitioners.

REASONS FOR GRANTING THE WRIT

1. THE DECISION OF THE TENTH CIRCUIT COURT OF APPEALS IS IN CONFLICT WITH DECISIONS OF OTHER CIRCUITS AS TO THE PRESUMPTIVE EFFECT OF AN INTERNAL REVENUE SERVICE JEOPARDY ASSESSMENT.

The Internal Revenue Service made a jeopardy assessment under 26 U.S.C. § 6861 and then moved to levy and foreclose against the property of G. M. Leasing Corporation in aid of its jeopardy assessment against George I. Norman, Jr. and Frances M. Norman, taxpayers. The Internal Revenue Service contended G. M. Leasing was the alter ego of the Normans. The trial court found that petitioners had offered sufficient evidence to establish material error in the assessment and concluded that the assessment of income taxes, penalties and interest against the taxpayers for 1970 and 1971 was erroneous. The trial court found a failure of the assessment to take into consideration payment made by George I. Norman, Jr., in the sum of $289,800; that the assessment had included items of income which were not in fact income, including $115,000 in alleged income from a sale of securities which was not a sale of securities; failed to credit taxpayers with any business expenses; and gave a zero base to certain stock sales which would have provided income to the taxpayers. Petitioners contended in the trial court that these deficiencies of the respondents shifted the burden of proof as to the correctness of the assessment back to the government and that the government did not meet its burden. This position was adopted by the trial court. The Tenth Circuit reversed stating that the assessment established a prima facie case of liability and that the burden was upon petitioners of going forward with evidence and, also, the burden of ultimate persuasion.

In *United States v. Rindskopf*, 105 U.S. 418 (1881), this Court noted that an assessment made by the Commissioner of Internal Revenue on distilled spirits was merely prima facie evidence. Various Circuit Courts of Appeals have taken the position that the Court has left open the question as to the extent of persuasion a taxpayer must bear before it has been established that the government's assessment is no longer credible. The Court of Appeals apparently adopted the position that petitioners had not met their burden even though the assessment contained the defects the District Court found including an admitted concession of inaccuracies in the assessment of including $115,000 of income. The Court of Appeals relied in part upon *Foster v. CIR*, 391 F.2d 727 (4th Cir. 1968). The *Foster* case is not proper authority to support the Tenth Circuit's position. The case came before the Fourth Circuit on review from the tax court which had individually considered each item and found against the plaintiff. The Fourth Circuit Court of Appeals concluded that the taxpayer had met his burden to overcome the presumption of correctness when he produced evidence that he did not receive the income assessed in the deficiency and upon such a showing the burden shifts back to the government to prove the correctness of the assessment. The court did say that a mere inaccuracy for one year

would not affect the presumption with reference to the (...) deficiency *where the items were separable.* The Tenth Circuit Court's position seems to be an extension of the *Foster* case by no longer requiring that the erroneous assessments be separable before a substantial error can override a jeopardy assessment.

In, *United States v. Rexach*, 482 F.2d 10 (1st Cir. 1973), the Court of Appeals for the First Circuit said that with reference to a deficiency assessment, the tax payer has the burden of showing the assessment is wrong and the burden remains upon the taxpayer and does not shift back to the United States. The Tenth Circuit cited to the *Rexach* case with approval. See, e.g., 514 F.2d 935, 941.

The Second Circuit Court of Appeals has apparently taken a different position. *United States v. Lease*, 346 F.2d 696 (2nd Cir. 1965). In the *Lease* case, the Second Circuit stated:

> Burden is therefore on the taxpayer in the first instance to disprove the computations by the commissioner by a fair preponderance of the credible evidence . . .
>
> Should you find that the defendant has shown error, with respect to a particular item the presumption of correctness of the computations by the commissioner and assessment with respect to that item disappears and then the burden shifts to the Government to prove whether *any* deficiency exists and if so in what amount. (Emphasis added).

> It is not incumbent . . . upon the taxpayer under these circumstances to prove that he owed no taxes or that the correct amount of the tax which he did owe or the correctness of the item concerned.

The Fifth Circuit Court of Appeals has also adopted the Second Circuit's position. In *Bar L. Ranch, Inc. v. Phinney*, 426 F.2d 995 (5th Cir. 1970), the court stated:

> We therefore agree with the conclusion of the *United States v. Lease, Supra,* that a taxpayer defending a collection suit need only show that the Government assessment was arbitrary and that the burden is then on the Government to show whether any deficiency exists, and if so, in what amount.

Consequently, it would appear that the Tenth Circuit and First Circuit's positions are not in harmony with those taken by the Fifth and Second Circuits and that the Fourth Circuit Court of Appeals has taken a positon somewhat akin to that of the Second and Fifth Circuits but with some modifications. It is therefore submitted that with the Circuit Courts of Appeals taking differing positions and this Court having not articulated with specificity the burden that a taxpayer must meet in overcoming the presumption of validity of an assessment of the Internal Revenue Service that this Court should accept jurisdiction and establish a standard that would be of uniform application in the administration of the tax laws of the United States.

2. THE DECISION BELOW REGARDING THE CONDUCT OF THE RESPONDENTS IS CONTRARY TO THE FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND RELEVANT DECISIONS OF THIS COURT.

The trial court found that on the 23rd day of March, 1973, respondents as employees of the Internal Revenue Service made forced entry into the premises of the petitioners in Salt Lake County, Utah, for the purpose of searching for books and records to be used as evidence against taxpayers George I. Norman, Jr. and Frances M. Norman. The court also found a similar entrance was made on the 25th day of March, 1973. No search warrant was obtained for entry into the premises and seizure of records. The records were duplicated and kept by the United States. The trial court further found the entry was intentional and with full knowledge of the respondents that they were violating the rights of petitioners. Further, certain motor vehicles which were assets of the petitioner G. M. Leasing Corporation were seized as well as stock which was later determined to be the property of the intervenor George I. Norman, III, petitioner. Petitioners relied for their damage cause of action against respondents for the illegal search and seizure on this Court's decision in *Bevins v. Six Unknown Named Agents*, 403 U.S. 388 (1971). The Tenth Circuit Court of Appeals stated that it was clear from the record that appellants conducted a valid statutory levy rather than an illegal search and seizure even though records were duplicated and kept by the United States.

It is submitted that the Tenth Circuit Court's conclusion that the statutory authority for levy and distraint contained in Title 26 U.S.C. § 6331 (a) and (b) does not satisfy Fourth Amendment standards. Assuming that there are valid reasons for the Internal Revenue Service having the authority to seize property, there is still the need even in administrative seizures for the warrant process. *Camara v. The Municipal Court of San Francisco*, 387 U.S. 523 (1967); *See v. City of Seattle*, 387 U.S. 541 (1967). The interests of a citizen in having his property reasonably free from unwarranted seizure at the whim and caprice of tax officials can only be accomplished through the warrant process where the determination is made by some form of neutral official. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). The decision of the Tenth Circuit in effect leaves the process of seizure of property to the judgment of interested persons and provides no warrant process as required by the Fourth Amendment to the Constitution.

Further, the seizure of books and records can only be justified in aid of satisfying any tax liability. There would be no need to retain photocopies of the books and records of the petitioner, G. M. Leasing Corporation, for purposes of the tax levy. It is apparent that items were seized for their potential use in a criminal proceeding. The trial court found that certain of the agents, respondents who conducted the search in the instant case, were members of the Intelligence Division of the Internal Revenue Service seeking information for criminal prosecution. Books and records were duplicated and the duplicated records kept by the United

States. Such conduct flies in the face of this Court's decision in *Silverthorne Lumber Co., Inc. v. United States*, 251 U.S. 385 (1920). Nor can it be said that petitioners have an adequate remedy for suppression of the evidence if and when any criminal charges are brought. The fruit of the poisonous tree concept, *Wong Sun v. United States*, 371 U.S. 471 (1962), may, in some instances, provide a remedy to suppress evidence that the government has directly or indirectly obtained for the purposes of criminal prosecution. But because of the narrowness of the discovery process in criminal proceedings, it is often most difficult to determine the real source of evidence. Consequently, the suppression hearing provides incomplete protection for the petitioners who have been the subject of an illegal search and seizure. Current process available to the Internal Revenue Service provides an adequate basis for the discovery of criminal activity without sanctioning warrantless searches. *United States v. Bischeglia*, ...U.S....., 95 S. Ct. 915 (1975).

In addition the levy and distraint process of 26 U.S.C. § 6331 (a) and (b) are contrary to standards this Court has imposed on state process in similar situations. *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, ... U.S....., 95 S.Ct. 719 (1975). Recently, in *Phelps v. United States*, ...U.S....., 95 S.Ct. 1728 (1975), this Court did discuss the levy process of 26 U.S.C. § 6331 (a). However, the Court did not consider the matter in the context of the conduct involved in this

case. The Tenth Circuit Court of Appeals reversed the trial court as to any claim of damages against the respondents or punitive damages and also rejected the trial court's order for the destruction of the books and records in the possession of the respondents and allowed the use of photostats of said books and records. The decision of the Tenth Circuit Court of Appeals if left to stand places the stamp of approval on conduct in a similar historical context which led to the American Revolution. This Court should accept jurisdiction to determine the correctness of the Tenth Circuit's conclusions.

3. THE DECISION OF THE TENTH CIRCUIT COURT OF APPEALS THAT THE PETITIONER WAS THE ALTER EGO OF THE TARGET TAXPAYERS AND THE JUDGMENT RENDERED THEREON SHOULD BE REVERSED WITH AN OPPORTUNITY FOR THE PETITIONERS TO PRESENT ADDITIONAL EVIDENCE ON THE ISSUE.

The District Court found that G. M. Leasing Corporation was not the alter ego of the taxpayers, George I. Norman, Jr. and Frances M. Norman. The Tenth Circuit Court of Appeals viewed the evidence to the contrary and held the trial court's findings to be clearly erroneous. The court from its opinion apparently assumed the burden of showing non-alter ego status was on the petitioners. The Tenth Circuit reversed the trial

court on this point without affording petitioners an opportunity to present evidence as a part of its case in chief on the issue. In the pretrial order (R. 61), it was stipulated that the respondents, United States, etc., had the burden of proof to show that G. M. Leasing Corporation was the alter ego of the named taxpayers. At the time of trial, the petitioner, G. M. Leasing Corporation, moved for a directed verdict or for a judgment of the evidence pursuant to Rule 41 (b) and (c) Federal Rules of Civil Procedure. The motion was made at the close of respondents' evidence. The petitioners were prepared with additional witnesses and evidence to support their contentions, but had no opportunity to do so because the District Court granted petitioners' motions. Thus, the Tenth Circuit Court of Appeals should not have reversed the case outright, but, if it was of the opinion that respondents had sustained their burden of proof, should have remanded the case for further evidence from the petitioners. By not allowing the petitioners to present their side of the case, the Court of Appeals unilaterally determined the matter purely on the government's evidence as well as rejecting the trial court's findings. This Court should grant the petition for certiorari for the purposes of remanding the matter to the District Court with an opportunity for the petitioners to present evidence on the question of whether G. M. Leasing Corporation was, in fact, the alter ego of the taxpayers.

CONCLUSION

For the three reasons presented, a writ of certiorari should issue to review the judgment and opinion of the Tenth Circuit Court of Appeals.

Respectfully submitted,

RICHARD J. LEEDY
309 Newhouse Building
Salt Lake City, Utah 84111
Attorney for Petitioners

APPENDIX

(Opinion of the Court of Appeals, Findings of Fact, Conclusions of Law, and Judgment of the District Court)

APPENDIX A

G. M. LEASING CORP.,
Plaintiff-Appellee,

v.

The UNITED STATES of America et al.,
Defendants-Appellants,

George I. Norman, III, Intervenor.

No. 74-1436.

United States Court of Appeals,
Tenth Circuit.

Submitted Jan. 24, 1975.

Decided May 1, 1975.

HILL, Circuit Judge.

This appeal results from an allegedly wrongful levy and seizure by Internal Revenue Service agents of a corporation's assets to satisfy the income tax liability of an individual taxpayer.

Appellants are the United States, Department of the Treasury, Internal Revenue Service (IRS), and a district director and several agents of the IRS. Appellee G. M. Leasing Corp., is a Utah corporation allegedly engaged in a luxury car leasing business in Salt Lake City, Utah.

The controversy centers around the income tax liability of George I. Norman, Jr. (taxpayer), a fugitive from justice.[1] He neglected to file a 1970 or a 1971 income tax return. Subsequently, in October, 1972, IRS agent Philip Clayton was assigned to investigate taxpayer's possible income tax libaility. Clayton received no information or cooperation from taxpayer and necessarily had to base any income tax deficiency upon an examination of third party records. This investigation resulted in deficiency assessments against taxpayer and his wife on March 19, 1973, in the respective amounts of $951,409.93 and $154,138.54. Jeopardy assessments were issued the next day and IRS agents went to taxpayer's residence in Salt Lake City, Utah, to collect the tax. They informed taxpayer's wife of the jeopardy assessments and made a demand for the tax due. She refused and the agents left. Federal tax liens were filed and levies were placed on taxpayer's bank account.

While at taxpayer's residence the IRS agents had observed several automobiles in taxpayer's driveway. A subsequent check with the state motor vehicle department revealed that these automobiles were registered to appellee and another corporation organized and controlled by taxpayer, and that taxpayer owned no automobiles. After further investigation it was determined that appellee was taxpayer's alter ego or transferee and that its assets should be seized to satisfy taxpayer's tax liability.

---

[1] Taxpayer became a fugitive from justice after being convicted of violating 18 U.S.C. §§ 656 and 2. See United States v. Cooper, 464 F.2d 648 (10th Cir. 1972.)

On March 21, 1973, the IRS agents went to appellee's premises to seize assets. This was also the location of taxpayer's other offices and was owned by one of taxpayer's other corporation. Additionally, taxpayer's son, George I. Norman, III (intervenor), was using the premises as a personal residence. With the aid of locksmiths, the agents succeeded in gaining entry into the building. At this point intervenor arrived on the scene and asked what the agents were doing. They told him that they were contemplating seizing assets, and they entered the building. They left a short time later without seizing anything, being unsure as to whether the building was a personal residence or a business office.

The agents returned to appellee's premises on March 23, 1973, to seize assets and documents. They again used locksmiths to gain entry. They seized, inter alia, documents and placed them in boxes, which were loaded on a moving van. It was thought that the documents might be, or could indicate the location of, money and stock certificates. These documents were photocopied and the originals were subsequently returned to appellee. The agents also seized appellee's bank account and automobiles. Subsequently, they determined that intervenor was taxpayer's alter ego and seized 7,143 shares of Emdeko stock in intervenor's name.

On May 3, 1973, appellee filed suit against appellants in the United States District Court for the District of Utah. A second amended complaint, filed on October 17, 1973, alleged, inter alia, that the jeopardy assessments were arbitrary, capricious and without found-

ation; that the determination that appellee was taxpayer's alter ego was arbitrary and capricious; that IRS agents illegally entered appellee's office, thus violating appellee's and taxpayer's constitutional right of privacy; and, that IRS agents conducted an illegal search and seizure of appellee's premises.

The complaint requested, as relief, the return or destruction of the photocopies of the documents seized; return of the automobiles levied on and seized; suppression of evidence obtained from the seized documents and an order barring appellants from ever again obtaining such evidence by any means; suppression of the seizure of the automobiles as evidence and an order barring appellants from ever again seizing said automobiles; release of all levies filed by appellants against appellee's property; and, $525,000 damages for appellants' violation of appellee's constitutional rights.

Intervenor's motion for intervention was granted and he filed a complaint alleging that he was the owner of the Emdeko stock seized by the IRS agents. The complaint requested a determination that intervenor was not taxpayer's alter ego, return of the stock, and money damages in an undetermined amount.

Appellants answered on November 1, 1973, and also counterclaimed for foreclosure of its tax liens. After a nonjury trial the trial court entered findings of fact and conclusions of law, including the following: appellee was not taxpayer's alter ego; the seizure of appellee's assets and documents constituted an illegal search and seizure; appellant Clayton maliciously participated in

the search and seizure of appellee's premises; the assessments against taxpayer and his wife for 1970 and 1971 were erroneous and they have no liability for federal income tax for those years; and intervenor was the owner of 7,000 shares of Emdeko stock but was taxpayer's alter ego with respect to 143 shares thereof.

The trial court entered judgment for appellee and intervenor on May 24, 1974. The judgment (1) gave appellee and intervenor money damages in an undetermined amount against the individual IRS agents; (2) gave appellee and intervenor punitive damages in an undetermined amount against appellant Clayton; (3) suppressed any use of the seized documents or photostats thereof; (4) dismissed appellant's counterclaim with prejudice; (5) ordered the return to appellee and intervenor of all seized assets; (6) ordered the return of 7,000 shares of Emdeko stock to intervenor and the return of 143 shares of Emdeko stock to taxpayer, his wife, "or any other rightful claimant"; (7) removed all levies and liens against said assets; and (8) gave appellee an undetermined amount of money damages for assets disposed of by appellants.

[1] Appellants first challenge the trial court's finding that appellee was not taxpayer's alter ego. This finding is presumptively correct and must be left undisturbed on appeal unless it is clearly erroneous. Quarles v. Fuqua Industries, Inc., 504 F.2d 1358 (10th Cir. 1974). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been committed. *See, e.g.*, Kelson v. United States,

503 F.2d 1291 (10th Cir. 1974); Clancy v. First Nat'l Bank, 408 F.2d 899 (10th Cir. 1969), cert. den'd 396 U.S. 958, 90 S.Ct. 430, 24 L.Ed.2d 422.

We are convinced that the trial court's alter ego finding is, as appellants contend, clearly erroneous. The evidence overwhelmingly indicates that appellee had no separate or independent existence and that it was taxpayer's alter ego. Appellee was one of four corporations whose existence was initiated by taxpayer. He was not an incorporator, director or officer of appellee, but served only as its general manager. He nevertheless exerted substantial, if not exclusive, control over appellee.

Although appellee had three directors they were nothing more than figureheads. They made no business decisions, had no duties, attended no directors meetings, and were paid no salaries. One of the directors was taxpayer's parttime secretary. She became an incorporator-director at taxpayer's request but was not told what duties and responsibilities these positions would involve and was not informed of the nature of appellee's business. She did not participate in running the affairs of appellee except to write a check when told to do so by taxpayer. She continued to work as taxpayer's secretary while serving as a director and, although she is not presently associated with appellee, never officially terminated her position.

Another incorporator-director, the attorney who prepared the legal work for appellee's incorporation, testified that appellee was merely a shell or alter ego of taxpayer and that "it had no assets or property of its own." He also testified that certain people acted as

officers of appellee in connection with one or two transactions but that appellee actually had no officers. A third director, who also was a director of taxpayer's other corporations, testified that taxpayer controlled the affairs of the corporation "along with discussion of other people."

Taxpayer's dealings with appellee's assets is another factor indicating appellee had no separate existence. Some of appellee's assets, luxury automopiles worth thousands of dollars each, were owned by taxpayer and transferred to appellee. There is no evidence in the record that these transfers were for consideration. The record does suggest that appellee did not have sufficient, if any, funds to acquire these assets. Moreover, the record discloses that these automobiles were not transferred to appellee until several months after its incorporation. One of taxpayer's employees, whose duties included such things as taking care of these luxury automobiles for taxpayer, testified that taxpayer used the automobiles in his individual business and that they were part of his advertising campaign.

The record also indicates that taxpayer purchased a new Jaquar in appellee's name and paid for it with a check drawn on appellee's bank account, but that taxpayer's wife used the car as her personal vehicle. And, a gas station that stored some of appellee's luxury automobiles for taxpayer was paid by checks drawn on Commercial Properties, another of taxpayer's corporations, with only a couple of bills being paid by appellee.

Other evidence indicating that appellee is taxpayer's alter ego is the fact that appellee was supposedly

engaged in the automobile leasing business but that it leased no automobiles; it had no employees, paid no wages, paid no state sales or use tax, issued no stock and had no stockholders' meetings. Appellee contends that stock was issued but has presented no stock certificates, minutes of stockholders' meetings or other documentary evidence to substantiate its allegations.

[2] Based upon this evidence we think it is clear that appellee was taxpayer's alter ego. Accordingly, we must hold that the trial court's finding to the contrary was error.

[3] Relying on Rule 52, F.R.Civ.P.,[2] appellants

[2] Rule 52, F.R.Civ.P., provides:

"(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58, and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds for its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

"(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the questions has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment."

next contend the trial court erred because it entered no independent findings of fact or conclusions of law but merely accepted those prepared by appellee. We agree. This practice of the same trial judge has been twice condemned. See United States v. El Paso Natural Gas Co., 376 U.S. 651, 84 S.Ct. 1044, 12 L.Ed.2d 12 (1964); Kelson v. United States, *supra*. "The mechanical adoption of a litigant's findings is an abandonment of the duty imposed on trial judges by Rule 52, F.R.Civ.P., because findings so made fail to 'reveal the discerning line for decision. . . .'" Kelson v. United States, *supra* at 1294.

Appellants next contend that the trial court erred in holding that appellee's documents and automobiles were illegally seized, and in ordering the return of the automobiles and the suppression of the documents. Again, we agree.

[4] Part of the basis for the trial court's ruling in this regard appears to be a finding that appellant Clayton's participation in the search and seizure was of a malicious character. There is no evidence in the record to support this finding, and we must hold that it is clearly erroneous.

[5] It is clear from the record that appellants conducted a statutorily valid seizure. A jeopardy assessment was made on March 19, 1973. Notice and demand for immediate payment were made the following day,

as authorized by 26 U.S.C. § 6331(a).[3] The refusal to pay authorized appellants to collect the tax by levy, and this included the power of "seizure by any means."[4] Thus appellants were acting pursuant to statute and did not commit an illegal search. The trial court's order returning the assets and suppressing the documents is improper.

Appellants next contend that the trial court erred in voiding the tax assessments and in dismissing their lien foreclosure counterclaim. Appellee, on the other hand, contends the trial court's actions were proper because the unrebutted evidence showed that the assessments were erroneous.

[6, 7] When the government undertook to prove its counterclaim, it offered into evidence documents showing a presumptively correct tax assessment[5] and

---

[3] 26 U.S.C. § 6331(a) provides in part:

"If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax. . . . If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section."

[4] 26 U.S.C. § 6331(b) provides in part:

"The term 'levy' used in this title includes the power of distraint and seizure by any means."

[5] These documents were Defendants Exhibit 8, Notice of Federal Tax Lien Under Internal Revenue Laws, and Defendants Exhibit 10, Levy. We also consider Defendants Exhibit 11, Certificate of Assessments and Payments. The trial court refused to admit this document into evidence. We find no valid basis for excluding it and believe it should have been admitted.

thereby established a prima facie case of liability. *See, e.g.*, Psaty v. United States, 442 F.2d 1154 (3rd Cir. 1971); Adams v. United States, 358 F.2d 986, 175 Ct. Cl. 288 (1966); 9 Mertens L. Fed Income Tax. § 49.218 (Zimmet rev. 1971). This placed upon appellee the burden of going forward with the evidence and the burden of ultimate persuasion. *See, e.g.*, United States v. Rexach, 482 F.2d 10 (1st Cir. 1973), cert. den'd 414 U.S. 1039, 94 S.Ct. 540, 38 L.Ed.2d 330.

Appellee contends it met this burden of proof by showing that the assessment was erroneous in that it (1) did not give taxpayer credit for $289,800 which taxpayer paid; (2) gave taxpayer no credit for business expenses; (3) gave taxpayer a zero basis in some stock; and (4) included as income a $115,000 stock sale which was not a sale. Appellee contends this evidence shifted the burden of proof back to appellants to show what deficiency, if any, existed and that appellants failed to prove any deficiency. We disagree.

[8, 9] The fact that taxpayer's assessment was not lessened by business expenses does not vitiate the assessment. The burden of proof to establish a deduction and the amount thereof is upon the taxpayer. Bishop v. CIR, 342 F.2d 757 (6th Cir. 1965). Here, taxpayer is not a party to the proceedings and he did not supply the IRS with any evidence of a business expense or with any documentation to substantiate a claim for a business expense deduction. Since no deduction was established the assessment's failure to reflect such a deduction was proper.

[10, 11] Nor does the fact that taxpayer was given a zero basis in some stock make the assessment erroneous. A taxpayer bears the burden of proving the cost or other basis of property. If he fails to do this the basis of such property is deemed to be zero. *See, e.g.*, Factor v. CIR, 281 F.2d 100 (9th Cir. 1960), cert. den'd, 364 U.S. 933, 81 S.Ct. 380, 5 L.Ed.2d 365.

[12] Appellee also asserts that the assessment was erroneous because it was not lessened or offset by a $289,800 payment made by taxpayer. This payment was attached to an estimated tax return and sent to the IRS on November 15, 1971, before any investigation of tax liability had been conducted or any assessment made. The money was placed in a suspense account to be applied against the assessment. In accordasce with IRS policy this money could not, at the time the assessment was being made, be applied as an offset or credit. The record discloses that taxpayer's account was subsequently credited with this payment. This method of handling a payment did not make the assessment erroneous.

[13, 14] Appellants concede that the assessment included $115,000 of income that was not income, and appellee contends this error vitiates the entire assessment. We are not persuaded that it does. Merely showing an inaccuracy in one item in the deficiency determinations does not defeat the presumption of correctness in favor of the Commissioner with respect to the entire deficiency. *See e.g., Foster v. CIR*, 391 F.2d 727 (4th Cir. 1968).

[15] Appellee, then, has not proven the assessment

to be erroneous. Under these circumstances the trial court erred in voiding the assessment and not decreeing the requested foreclosure of the lien upon the property lawfully seized.

The final issue concerns the disposition of certain stock. Appellants levied on 7,143 shares of Emdeko stock, of which intervenor claimed to be the owner. The trial court found that 7,000 shares of this stock belonged to intervenor and ordered it returned to him. However, it found that intervenor was taxpayer's alter ego with respect to the remaining 143 shares of stock, and it ordered these shares returned to taxpayer, his wife, or any other rightful claimant.

[16] Appellants do not contest the trial court's determination of the 7,000 shares but they do contend that the remaining 143 shares should not be returned to taxpayer. We agree. Appellants seized the stock as part of its levy on taxpayer's property. The trial court should have allowed appellants to keep the 143 shares, which it found were owned by taxpayer, to satisfy taxpayer's tax liability.

In sum, we affirm the trial court's judgment insofar as it orders the 7,000 shares of Emdeko stock returned to intervenor. We reverse the judgment insofar as it (1) awards appellee and intervenor money damages against all appellants; (2) awards appellee and intervenor punitive damages against appellant Clayton; (3) orders the destruction of the books and records in the possession of appellants; (4) orders that any use of photostats of said books and records is illegal; (5) dis-

misses appellants' counterclaim; (6) orders appellants to return all seized assets to appellee and intervenor; (7) removes all levies and liens against said assets; and (8) awards appellee judgment for the value of two automobiles disposed of by appellants. We also conclude, as a matter of law, that at the time of the seizure the government had a valid existing lien upon all of the property involved herein in an amount in excess of the value of the property seized. Judgment will be entered accordingly.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

G. M. LEASING CORPORATION,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA, et al.,
Defendants.

Findings Of Fact And Conclusions Of Law

Civil No. C-189-73

Trial on this matter came on regularly on the 10th day of May, 1974; the plaintiff and intervenor were represented by counsel, Richard J. Leedy, Attorney at Law; the defendants were represented by counsel, Michael B. Andolina, Esq., Durrell Nielsen, Esq., C. Garold Sims, Esq., James M. Dunn, Esq., and C. Nelson Day, U.S. Attorney; the plaintiff and intervenor

presented evidence supporting their claims; and the defendant presented evidence supporting its claim that the plaintiff and intervenor were alter-egos, nominees, or transferees of George I. Norman Jr., and Frances M. Norman and further evidence to support its counterclaim for foreclosure on the assets of plaintiff and intervenor and, after resting, the plaintiff and intervenor moved for Judgment and Dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure and the court, after reviewing the evidence and the memorandums and responsive memorandums submitted by each party and arguments of counsel and, based thereon, makes the following:

FINDINGS OF FACT

1. Plaintiff is a Utah Corporation.

2. Intervenor is an individual residing in Salt Lake County, Utah.

3. 4751-4753 Holladay Boulevard were the offices of plaintiff G. M. Leasing Corporation and the residence of intervenor, George I. Norman III.

4. On the 23rd day of March, 1973, employees of the Internal Revenue Service forced entry and entered the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, for the purpose of searching for books and records to be used as evidence against George I. Norman Jr. and Frances M. Norman.

5. On the 25th day of March, 1974, employees of Internal Revenue Service again forced entry and searched the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, and seized books and records belonging to plaintiff and others to use as evidence against George I. Norman Jr. and Frances M. Norman.

6. That the employees of the Internal Revenue Service committing said search and seizure were defendants James M. Livsey, John W. Haacke, Glen S. Hilton, Keith E. Finley, Jr., Clark D. Holfeltz, Josph J. White, Clesse S. Hilton, Burt C. Applegate, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Philip J. Clayton.

7. The defendants did not obtain a search warrant for the entry into 4751-4753 Holladay Boulevard for search and seizure of records nor did they obtain or serve a summons for seizing the books and records.

8. That the above named defendants did intentionally commit said forced entry, search and seizure knowing full well that they were violating the rights of G. M. Leasing Corporation, intervenor and others.

9. Two of the individual defendants were employed in the IRS Intelligence Division for conducting criminal investigations.

10. Defendant Philip Clayton maliciously committed said forced entry, and search and seizure.

11. After the commencement of this action, the de-

fendants returned the books and records that had been seized at 4751-4753 Holladay Boulevard but photostated said books and records and now retain said photostats.

12. The defendants levied upon and seized all of the assets of G. M. Leasing Corp, which include, to wit: one Stutz automobile, Serial No. 276571A172678; one 1972 Stutz automobile, Serial No. 276571A172863; one Rolls Royce Phantom V Limousine, Serial No. 5LUA59; one 1930 Rolls Royce Phantom, Serial No. 21649; one 1971 four-door Stutz Salon, Serial No. 2765-79P364856; one 1971 Stutz, Serial No. 276571A155699; one Jaguar, Serial No. UC1L67176 BW; and a bank account at Zions First National Bank in Salt Lake City, Utah.

13. The defendants disposed of two Stutz automobiles; one 1971 four-door Stutz Salon, Serial No. 2765-79P364856; and one 1971 Stutz, Serial No. 276571A1-55699; the remaining automobiles owned by G. M. Leasing Corp., are under seizure and being stored by the defendants at 50 West 300 South, Salt Lake City, Utah.

14. The defendants seized Certificate # SL012905 of Emdeko International, Inc., bearing 7,143 shares of its common stock from intervenor.

15. All seizures took place pursuant to a jeopardy assessment for federal income taxes, penalties, and interest allegedly owed by George I. Norman Jr. and Frances M. Norman for the years 1970 and 1971.

16. The seizures were based on defendants determination that plaintiff and intervenor were alter-egos, nominees, or transferees of George I. Norman Jr. and Frances M. Norman.

17. The assessment of income taxes failed to take into consideration a $289,800.00 payment by George I. Norman Jr. and the penalties and interest were also assessed without consideration of the $289,800.00 payment.

18. The assessment included items of income which were not in fact income, including $115,000.00 in alleged income from an alleged sale of securities which was not a sale of securities and was not income.

19. The assessment did not give credit for business expenses incurred by George I. Norman Jr. and Frances M. Norman, and George I. Norman Jr. and Frances M. Norman had extraordinarily high business expenses.

20. The assessment of income taxes, penalties, and interest against George I. Norman Jr. and Frances M. Norman for the years 1970 and 1971 was erroneous.

21. No income or liability for federal income taxes, penalties or interest for George I. Norman Jr. or Frances M. Norman was proven.

22. George I. Norman Jr. and Frances M. Norman have no liability for federal income taxes, penalties or interest for the years 1970 and 1971.

23. G. M. Leasing Corp. was formed and incorporated for the legitimate business purpose of leasing automobiles.

24. The assets of G. M. Leasing Corp. were not transferred to it by George I. Norman Jr. or Frances M. Norman for insufficient consideration.

25. G. M. Leasing Corp. was not undercapitalized at its formation.

26. G. M. Leasing Corp. was not set up for fraudulent purposes or for the purposes to contravene law or contract.

27. G. M. Leasing Corp. had a board of directors and officers.

28. G. M. Leasing Corp. has engaged in substantial business activity in preparation for its business purpose of leasing automobiles.

29. G. M. Leasing Corp. was not solely controlled by George I. Norman Jr. or Frances M. Norman.

30. G. M. Leasing Corp. was not a transferee of George I. Norman Jr. or Frances M. Norman.

31. G. M. Leasing Corp. was not an alter-ego of George I. Norman Jr. or Frances M. Norman.

32. G. M. Leasing Corp. was not a nominee of George I. Norman Jr. or Frances M. Norman.

33. With respect to 7,000 shares of the 7,143 share certificate of Emdeko International, Inc. common stock seized from intervenor George I. Norman III, George I. Norman III, owned 7,000 shares and was not an alter-ego, nominee, or transferee of George I. Norman Jr. or Frances M. Norman.

34. With respect to 143 shares of Emdeko International, Inc. common stock seized from George I. Norman III, George I. Norman III, was acting as alter-ego, nominee, or transferee of George I. Norman Jr. and Frances M. Norman.

From the above findings of fact, the court makes the following.

CONCLUSIONS OF LAW

1. The defendants James M. Livsey, John W. Haacke, Glen S. Hilton, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Burt C. Applegate, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Phillip J. Clayton, committed an illegal search and seizure of the offices of plaintiff and the residence of intervenor in violation of the 4th Amendment to the United States Constitution and plaintiff and intervenor are entitled to Judgment for damages against those defendants for the invasion of their privacy in an amount yet to be determined and the photostats of all illegally seized books and records now in the possession of the defendants should

be destroyed and any use of those photostats of books and records would be illegal.

2. Plaintiff and intervenor are entitled to a Judgment for punitive damages from the defendant Philip J. Clayton in an amount yet to be determined.

3. The defendants counterclaim for foreclosure should be dismissed with prejudice.

4. The defendants should be ordered to return all of the seized assets of G. M. Leasing Corp. and intervenor; which are: one 1972 Stutz automobile Serial No. 276571A172678; one 1972 Stutz automobile, Serial No. 276571A172863; one Rolls Royce Phantom V Limousine, Serial No. 5LUA59; one 1930 Rolls Royce Phantom, Serial No. 21649; one Jaguar, Serial No. UC1L-67176 BW; without cost for storage in the same condition as said assets were at the time of said illegal seizure and 7,000 shares of Emdeko International, Inc. stock to intervenor together with 143 shares of Emdeko International, Inc. stock to G. I. Norman Jr., Frances M. Norman or any other rightful claimant. All levies and liens against said assets should be removed and Judgment against the defendant United States of America in favor of plaintiff should be awarded in an amount yet to be determined for the value of two automobiles disposed of by defendants.

Dated this 24th day of May, 1974.

By The Court:

/s/ WILLIS W. RITTER

Honorable Willis W. Ritter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

G. M. LEASING CORPORATION,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA, et. al,
Defendants.

Judgment
Civil No.
C-189-73

Trial on this matter came on regularly on the 10th day of May, 1974; the plaintiff and intervenor were represented by counsel, Richard J. Leedy, Attorney at Law; the defendants were represented by counsel, Michael B. Andolina, esq., Durrell Nielsen, Esq., C. Garold Sims, Esq., James M. Dunn, Esq., and C. Nelson Day, U. S. Attorney; the plaintiff and intervenor presented evidence supporting their claims; and having previously made finding of fact and conclusions of law, and based thereon:

IT IS HEREBY ORDERED that the plaintiff and intervenor have judgment for damages in an amount yet to be determined against the defendants James M. Livsey, John W. Haacke, Glen S. Hilton, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Burt C. Applegate, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Philip J. Clayton.

IT IS FURTHER ORDERED that the plaintiff and intervenor have Judgment for punitive damages from the defendant Philip J. Clayton in an amount yet to be determined.

IT IS FURTHER ORDERED that all illegally seized books and records now in the possession of the defendants be destroyed and any use of those photostats of books and records is illegal.

IT IS FURTHER ORDERED that the defendants counterclaim for foreclosure is dismissed with prejudice.

IT IS FURTHER ORDERED that the defendants return all of the seized assets of G. M. Leasing Corp. and intervenor; which are: one 1972 Stutz automobile Serial No. 276571A172678; one 1972 Stutz automboile, Serial No. 276571A172863; one Rolls Royce Phantom V Limousine, Serial No. 5LUA59; one 1930 Rolls Royce Phantom, Serial No. 21649; one Jaguar, Serial No. UC1L67176 BW., without cost for storage in the same condition as said assets were at the time of said illegal seizure and 7,000 shares of Emdeko International, Inc., stock to intervenor together with 143 shares of Emdeko International, Inc., stock to G. I. Norman Jr., Frances M. Norman or any other rightful claimant.

IT IS FURTHER ORDERED that all levies and liens against said assets are removed.

IT IS FURTHER ORDERED that the plaintiff have Judgment in an amount yet to be determined for the value of the two automobiles disposed of by defendants.

DATED this 24th day of May, 1974.

BY THE COURT:

/s/ WILLIS W. RITTER

Honorable Willis W. Ritter

Supreme Court, U.S.
FILED
JAN 29 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-235

G. M. LEASING CORP.,
Petitioner,

v.

UNITED STATES OF AMERICA, et al.,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Washington, D.C. • THIEL PRESS • (202) 638-4521

[PETITION FOR WRIT OF CERTIORARI FILED AUGUST 13, 1975]

[CERTIORARI GRANTED DECEMBER 1, 1975]

TABLE OF CONTENTS

Page

Amended Complaint 105

Motion for Intervention 1

Complaint in Intervention 112

Motion to Strike all Claims for Relief Requested by Plaintiff's Amended Complaint Other than the Request for the Return of Personal Property Allegedly Wrongfully Seized by the Internal Revenue Service 2

w/attached Memorandum of Points and Authorities 3

Order, dated 8/8/73 8

Second Amended Complaint 117

Pre-Trial Order 124

Answer and Counterclaim 127

Reply 134

Summary of Proceedings of 1/9/74 9

Summary of Proceedings of 1/11/74 9

Summary of Proceedings of 1/14/74 10

Motion to Dismiss 136

Findings of Fact and Conclusion of Law 136

Judgment 142

Application for Stay Pending Appeal 12

Order Staying Judgment 13

Notice of Appeal 13

Supreme Court Order Allowing Certiorari 14

Excerpts from Transcript of Proceedings

January 11, 1974 –

Witnesses:

Bert Applegate (direct) 18

Philip James Clayton (direct) 25

Cross 30

Page

George Henry (direct) 31

January 14, 1974 –

Witnesses:

George I. Norman, III (direct) 32

Richard Head (direct) 36

Katharine Head (direct) 38

Wallace Eddie Larrabee (direct) 40
Cross 42

Shirley P. Jones, Jr. (direct) 43
Redirect 49

Floyd LaMar Moody (direct) 49

LaVor Rulon Wood (direct) 50

James M. Livsey (direct) 55

Keith Finley (direct) 59

John C. Green (direct) 61

Philip James Clayton (direct) 66

Deposition of Bert Applegate (9/19/73) 68

EXHIBITS:

Defendant's Exhibit 2 – Utah Department of Employment Security Status Report 91

Defendant's Exhibit 3 – G M Leasing Corp. Utah Sales Tax Form for April-June 1972 93

Defendant's Exhibit 4 – U.S. Income Tax Return for 1970, for George I. and Frances Norman 94

Defendant's Exhibit 8 – Notice of Federal Tax Lien Under Internal Revenue Laws, dated 3/20/73, for George I. Norman, Jr. 95

Defendant's Exhibit 9 – Notice of Federal Tax Lien Under Internal Revenue Laws, dated 3/20/73, for Fr Frances M. Norman 96

Page

Defendant's Exhibit 10 – IRS Levy, dated 3/22/73 97

Defendant's Exhibit 11 – Cover letter and Certificate of Assessments and Payments for George I. and Frances M. Norman, for the year 7012 98

w/attached Cover letter and Certificate of Assessments and Payments for George I. and Frances M. Norman, for the year 7112 102

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

Civil No. C-189-73

G.M. LEASING CORP.,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
ROLAND V. WISE, District Director,
JAMES M. LIVSEY, JOHN W. HAACKE,
GLENN S. HILTON, JOHN DOE I,
JOHN DOE II, JOHN DOE III, JOHN DOE IV,
AND JOHN DOE V,
Defendants.

vs.

GEORGE I. NORMAN, III,
Intervenor.

MOTION FOR INTERVENTION

COMES NOW George I. Norman, III, by and through his counsel, Richard J. Leedy, Attorney at Law, and respectfully move the above-entitled Court Pursuant to Rule 24(b)(2) *Federal Rules of Civil Procedure*, allowing him to intervene in the above-entitled action. This

motion is made on the grounds and for the reasons that the claims of the plantiff have common questions of law with the claims of the Intervenor and similar fact situations.

DATED this 7 day of June, 1973.

BOTTUM & LEEDY

By /s/ Richard J. Leedy
Richard J. Leedy

[Certificate of Mailing Omitted in Printing]

[Caption Omitted in Printing]

MOTION TO STRIKE ALL CLAIMS FOR RELIEF REQUESTED BY PLAINTIFF'S AMENDED COMPLAINT OTHER THAN THE REQUEST FOR THE RETURN OF PERSONAL PROPERTY ALLEGEDLY WRONGFULLY SEIZED BY THE INTERNAL REVENUE SERVICE

Come now the defendants by their attorney, C. Nelson Day, United States Attorney for the District of Utah, and move this Court, pursuant to Rule 12(b) and (f), Federal Rules of Civil Procedure, to strike all claims for relief requested by plaintiff's Amended Complaint, other than the request against the United States for the return of personal property allegedly wrongfully seized from plaintiff by the Internal Revenue Service. As grounds for this motion, the United States would respectfully urge that this Court lacks jurisdiction over the sovereign, United States of America, which has not consented to be sued in this action, except insofar as plaintiff seeks return of

personal property allegedly wrongfully seized by the Internal Revenue Service.

Attached hereto in support of this motion is a memorandum of points and authorities.

C. NELSON DAY
United States Attorney
By:
U.S. Attorney

Copy of above Motion to Strike and of Memorandum of Authorities mailed to Richard J. Leedy, Esq., 10 Exchange Place, Suite 820, Salt Lake City, Utah, 84111, this 18th day of June 1973.

Mary Brockmuir
Secretary

[Caption Omitted in Printing]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE ALL CLAIMS FOR RELIEF REQUESTED BY PLAINTIFF'S AMENDED COMPLAINT OTHER THAN THE REQUEST FOR THE RETURN OF PERSONAL PROPERTY ALLEGEDLY WRONGFULLY SEIZED BY THE INTERNAL REVENUE SERVICE

The plaintiff corporation, G.M. Leasing Corp., instituted the present suit against the United States, its agency, the Department of Treasury, Internal Revenue Service, and its employees, Ronald V. Wise, District Director of Internal Revenue, James M. Livsey, John W. Haacke and Glenn S. Hilton, in an effort to obtain: (1)

the return of, or in the alternative, the destruction of, photostats of the books and records seized by the Internal Revenue Service; (2) the return of certain automobiles seized by the Internal Revenue Service; (3) an order from this Court determining that the plaintiff corporation is not the alter ego, nominee or transferee of delinquent taxpayers, George I, or Frances M. Norman; (4) an order suppressing any evidence obtained from seizure of the books and records referred to above; (5) an order suppressing the seizure of automobiles as evidence and forever barring the defendants from ever seizing automobiles; (6) an order from this Court releasing all levies filed against the property of the plaintiff; and, finally (7) a judgment against the individual defendants in an amount commensurate with the damages inflicted by virtue of the invasion of the plaintiff's constitutional rights. In support of the jurisdiction of this Court to entertain this action, the plaintiff has allegedly Section 7426 of the Internal Revenue Code of 1954 (26 U.S.C., §7426). The defendants have moved to strike all claims for relief requested by plaintiff in its Amended Complaint except that request against the United States pertaining to the return of personal property allegedly wrongfully seized by the Internal Revenue Service. As grounds therefor, the United States has urged that this Court lacks jurisdiction over the sovereign, which has not consented to be sued herein except insofar as plaintiff is seeking a return of personal property allegedly wrongfully seized. This memorandum of points and authorities is respectfully submitted in support of that motion to strike.

ARGUMENT

THIS COURT LACKS JURISDICTION OVER THE SOVEREIGN, UNITED STATES OF AMERICA, WHICH HAS NOT CONSENTED TO BE SUED IN THIS ACTION, EXCEPT INSOFAR AS PLAINTIFF IS SEEKING A RETURN OF PERSONAL PROPERTY ALLEGEDLY WRONGFULLY SEIZED FROM PLAINTIFF BY THE INTERNAL REVENUE SERVICE

It is a firmly established and traditionally honored principle of law that the United States, as sovereign, is immune from suit except where Congress, by specific statute, has waived sovereign immunity. *United States v. Alabama*, 313 U.S. 274 (1941). In the absence of an express statutory waiver of sovereign immunity, a court lacks jurisdiction to entertain an action brought against the United States and the action must be dismissed. *Harkins v. United States*, 375 F.2d 239 (C.A. 10, 1967). Although plaintiff's Amended Complaint names, in addition to the United States of America, the Department of the Treasury,[1] Ronald V. Wise, District Director of Internal Revenue,[2] and other governmental employees[3]

---

[1]The Department of the Treasury is not a legal entity subject to suit and the present action must be considered to be against the sovereign and may be maintained only if there is a waiver of sovereign immunity. *Vigil v. United States*, 293 F. Supp. 1176 (D. Col., 1968); and *Baumohl v. Columbia Jewelry Company*, 127 F. Supp. 865 (D. Md., 1955).

[2]Similarly, the rule of sovereign immunity cannot be circumvented by the mere form of denominating the District Director of Internal Revenue as a defendant. *Film Truck Service, Inc. v. Nixon*, 216 F. Supp. 77 (E.D. Mich., 1963); and *Jacobs v. District Director of Internal Revenue*, 217 F. Supp. 104 (S.D. N.Y., 1963).

[3]The remaining defendants, as governmental employees, are within the scope of governmental immunity and are not liable individually for actions within the scope of their employment. Accordingly, they must be dismissed from this action. *Bershad v. Wood*, 290 F. 2d 714 (C.A. 9, 1961); *O'Campo v. Hardesty*, 262 F. 2d 621 (C.A. 9, 1958).

as parties-defendant, it is clear that the present suit is maintainable, if at all, solely against the sovereign, since a determination is sought relative to the collection of taxes. *Dugan v. Rank*, 372 U.S. 609 (1963).

Plaintiff seeks to base jurisdiction of this Court to entertain the present action upon the provisions of Section 7426 of the Internal Revenue Code of 1954 (26 U.S.C., §7426). An examination of this statute will illustrate that it does not constitute the requisite waiver of sovereign immunity as would sustain this suit, except insofar as plaintiff is seeking a return of automobiles allegedly wrongfully levied upon.[4]

Section 7426 of the Internal Revenue Code of 1954 provides for the waiver of sovereign immunity in cases where the Internal Revenue Service seizes property which is not properly subject to the levy provisions of Section 6331 of the Internal Revenue Code of 1954 (26 U.S.C., §6331).[5] In *Sylk v. United States*, 28 A.F.T.R. 2d ¶71-5799 (E.D. Pa., 1971), the court reviewed the scope of Section 7426 and stated as follows:

> The legislative history of Section 7426 confirms that the section was to apply *only* where the government wrongfully levied upon [a third person's] property to satisfy the tax liability of another. S. Rep. No. 1708, 89th Cong. 2d Sess., P. 30 (1966) (Emphasis Supplied).

---

[4]With respect to plaintiff's claim for relief of the return of the subject automobiles, the United States would admit that plaintiff has stated a cause of action as would confer jurisdiction upon this Court but specifically denies that the seizure was wrongful as to the plaintiff and will assert an answer to this effect.

[5]Further, under Section 7426(e) of the Internal Revenue Code of 1954 only the United States may be named as a defendant to an action for the recovery of property allegedly wrongfully levied upon.

It can be seen, therefore, that the scope of the waiver of sovereign immunity contained in Section 7426 is very narrow and this section cannot be construed as conferring jurisdiction upon this Court to grant the various claims for relief requested by the plaintiff. Accordingly, as the plaintiff's complaint seeks relief other than the return of the subject automobiles, this Court is without jurisdiction to grant such requests.

Further, there is authority which prohibits the other relief requested by the plaintiff. With respect to its request that this Court enter an order declaring that it is not the alter ego, nominee or transferee of the deliquent taxpayers, George I and Frances M. Norman, and with respect to its request for an order suppressing evidence, it is clear that such relief is specifically prohibited by the provisions of Section 2201 of Title 28, United States Code, popularly referred to as the Declaratory Judgment Act, which provides that the federal courts may make declarations as to the rights and legal relations of the parties "in a case of *actual controversy* within its jurisdiction, *except with respect to Federal taxes*." (Emphasis Supplied.) In accordance with this unambiguous language, the courts have consistently ruled that a declaratory judgment cannot determine federal tax liability. *Mulcahy v. United States*, 385 F.2d 380 (C.A. 5, 1968); *Taylor v. Allan*, 204 F.2d 485 (C.A. 10, 1953); and *Wilson v. Wilson*, 141 F.2d 599 (C.A. 4, 1944). Thus, this Court cannot order suppression of any evidence since there is no *actual controversy* in which the evidence is sought to be introduced and similarly this Court cannot declare the plaintiff is not liable for federal taxes. Finally, with respect to plaintiff's request for a judgment against the individual defendants, such relief is expressly prohibited in the absence of a showing that such actions

complained of were taken outside the scope of their employment (See, authority cited in footnote 3, supra).

For these reasons, the relief requested in plaintiff's Amended Complaint should be stricken, with the singular exception of its request for relief against the United States for the return of the automobiles allegedly wrongfully seized by the Internal Revenue Service.

Respectfully submitted,

C. NELSON DAY
United States Attorney

By:
U.S. Attorney

[Caption Omitted in Printing]

ORDER

The defendant's motion to strike portions of plaintiff's complaint and plaintiff's motion to compel answers to oral interogatories and intervenor's motion to intervene came on regularly for hearing, pursuant to notice, on the 26th day of July, 1973, the plaintiff and intervenor were represented by counsel, Richard J. Leedy, Attorney at Law, and the defendants were represented by Counsel, C. Nelson Day and Michael B. Andolina, the Court heart arguments on the motion and informed counsel that he would not rule on the motion to compel answers, but indicated that he wanted broad discovery with no obstructions and that if further refusal to answer were had the depositions would be taken in open court and after hearing argument on the motion to intervene and motion to strike, the Court:

ORDERED that George I. Norman, III be permitted to intervene in this action; and

Defendant's motion to strike portions of plaintiff's complaint is denied.

DATED this 8 day of August, 1973.

BY THE COURT:

/s/ Willis Ritter
J U D G E

January 9, 1974 — Judge Ritter

G.M. Leasing Corporation
vs
United States of America,
Dept. of Treasury, et al. — C 189-73

This matter came on before the court at 10:00 a.m. for calling of calendar and court trial. Richard J. Leedy, Esq. appeared for the plaintiff. C. Nelson Day, Esq., United States Attorney, appeared for the defendant.

Counsel indicated their readiness for trial. This matter to be tried in sequence as listed on the calendar.

January 11, 1974

This matter came on before the court at 2:00 p.m. for court trial. Richard J. Leedy, Esq. appeared for the plaintiff. James M. Dunn, Esq., Assistant United States Attorney, Michael B. Andolini, Esq., Gary Sims, Esq. and Durrell Nielson, Esq. appeared for the defendants.

Mr. Dunn moved the admission of Gary Sims, Esq. and Durrell Nielson, Esq. for the purpose of this case only. Motion granted.

Opening statements were made by Messers. Leedy and Andolini.

Mr. Leedy called defendant, Bert Applegate, who was sworn and testified. Plaintiff's exhibit No. 1 was marked, offered, and received. Counsel stipulated that the defendants named in the complaint are all employees of the Internal Revenue Service who participated in the search and seizure. Mr. Leedy moved for the publication of the deposition of Bert Applegate. Motion granted. Mr. Leedy called defendant, Phillip James Clayton, who was sworn and testified. Plaintiff's witnesses; Cloyd Wangsgard and George Henry, were sworn and testified in order.

The hour of adjournment having arrived, court adjourned to Monday, January 14, 1974 at 10:00 a.m.

January 14, 1974

Trial resumed at 10:00 a.m. with counsel and parties as heretofore listed present.

Mr. Leedy called the intervenor, George I. Norman, III, who was sworn and testified in his own behalf.

Plaintiff rested, indicated that the defendant had the burden of proof on the alter ego theory.

Defendants' witness, Leland Black, was sworn and testified. Defendants' exhibit D-1 was marked and offered; said offering was objected to by the plaintiff and the objections sustained by the court. Defendants' witnesses; Albert A. Wahlberg, Richard Head, Katharine Head, Wallace Eddie Larrabee, and Shirley P. Jones, Jr., were sworn and testified in order. Defendants' exhibits D-2, D-3, and D-4 were marked, offered, and received. Defendants' witnesses; Floyd LaMar Moody and LaVar Lloyd Wood, were sworn and testified in order. Defendant, James M. Livsey, was sworn and testified in his own

behalf. Defendants' exhibits D-5, D-6, and D-7 were marked and offered; said offerings were objected to by the plaintiff and the objections sustained by the court and the exhibits not received; defendants' exhibits D-8 and D-9 were marked, offered, and received. Defendant, Keith Finley, was sworn and testified in his own behalf. Defendants' exhibit D-10 was marked, offered, and received.

The hour of noon having arrived, court recessed to 2:00 p.m.

Court reconvened at 2:00 p.m. with counsel and parties as heretofore listed present.

Plaintiff's exhibits Nos. 2, 3, and 4 were marked, offered, and received. Defendant, Clesse B. Hilton, was sworn and testified in his own behalf. Defendants' witness, John C. Greene, was sworn and testified. Defendants' exhibit D-11 was marked and offered; said offering objected to by the plaintiff. Counsel stipulated relative to this document. The court received the stipulation of counsel and the document was not received. Defendants recalled Phillip James Clayton for further testimony.

Defendants rested.

Arguments of counsel to the court were heard.

The court directed that memoranda be prepared contemporaneously supporting their respective positions fifteen (15) days after receipt of the reporter's transcript; counsel then allowed five (5) days thereafter in which to file reply memoranda. The court to set this matter down for oral hearing thereafter.

hs

cc: Richard J. Leedy, Esq., 10 Exchange Place, Suite 309, SLC
C. Nelson Day, Esq., U.S. Attorney, 200 Courthouse Bldg., SLC

[Caption Omitted in Printing]

APPLICATION FOR STAY PENDING APPEAL

The United States of America and the other defendants named in the above-entitled matter, hereby move the Court for it's Order staying the Judgment heretofore made and entered in this matter by the Court on May 24, 1974, pending appeal of this matter to the United States Court of Appeals for the Tenth Circuit upon the following grounds and for the following reasons:

1. A notice of appeal to the United States Court of Appeals for the Tenth Circuit has been filed in this matter by the defendants.

2. Demand has now been made upon the defendants by Richard J. Leedy, attorney for the plaintiff, and by George I. Norman, III, for delivery of one or more of the automobiles referred to in the said Judgment.

3. The said automobiles are now stored in a secure and proper garage and if one or some of them were permitted to be removed the defendants would, or could, suffer immediate and irreparable loss and damage.

4. This application for Stay of proceedings is made under the provisions of Rule 6, Rules of Civil Procedure.

C. NELSON DAY
United States Attorney

[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

ORDER STAYING JUDGMENT

Application having been made to the Court for stay of judgment heretofore made and entered in this matter on May 24, 1974, and it appearing that the United States of America and the other defendants have filed Notice of Appeal herein to the United States Court of Appeals for the Tenth Circuit, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Judgment heretofore made and entered in this matter by stayed and that no action be taken by either the plaintiff or the defendant with regard to any of the property referred to in said Judgment, pending the Appeal in the Court of Appeals or until the further Order of the Court.

DATED this 31 day of May, 1974.

/s/Willis Ritter
CHIEF JUDGE
WILLIS W. RITTER

[Caption Omitted in Printing]

NOTICE OF APPEAL

The United States of America, and the other defendants named in the above-entitled matter, hereby appeal to

the United States Court of Appeals for the Tenth Circuit from the Judgment heretofore made and entered in the above-entitled matter by the United States District Court for the District of Utah on May 24, 1974.

DATED this 31st day of May, 1974.

/s/C. Nelson Day
C. NELSON DAY
United States Attorney

[Certificate of Service Omitted in Printing]

SUPREME COURT OF THE UNITED STATES

No. 75-235

G.M. Leasing Corp., et al.,
Petitioners,

v.

United States, et al.

ORDER ALLOWING CERTIORARI. Filed December 15, 1975

The petition herefor a writ of certiorari to the United States Court of Appeals for the Tenth ------- Circuit is granted, limited to Question 2 presented by the petition which reads as follows;

"2. Whether tax agents of the United States acted illegally in seizing automobiles and documents in violation of the petitioner G.M. Leasing Corporation's Fourth Amendment rights under the Constitution of the United States."

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

[January 11, 1974]

[4] MR. LEEDY: This case involves the family of a man who is now a fugitive from justice and their assets. This man is Mr. Norman, who left the jurisdiction of the court in approximately March of 1973, needless to say, leaving his family in somewhat destitute circumstances.

* * *

[5] The corporation maintained offices at 4751 and 4753 Holladay Boulevard. It is a place which is sometimes referred to as the "Cottage" and was the offices of G. M. Leasing Corporation, several other family corporations, and also the office of George Norman.

* * *

[8] MR. ANDOLINA: May it please the Court, your Honor, basically the present action is a suit for wrongful levy against the United States of America.

The subject property which was levied upon was nine automobiles—I won't call them "antique" because some [9] of them are brand-new—they are very fine, rare automobiles that are worth a lot of money.

They were, concededly, in the title of the plaintiff corporation. The United States doesn't deny that.

The information, after a long and thorough investigation and interviewing many witnesses—the information available to the Internal Revenue Service was that the C. M. Leasing Corporation never did any leasing; it was just an alter ego of the taxpayer George I. Norman.

Accordingly, after many deliberations, it was felt that under a levy for the taxes of George I. Norman the subject automobiles could be seized, and they were in fact seized.

The issue as to the automobiles is simple: Who owns the cars? Are they George I. Norman's or were they the

property of the plaintiff corporation, which was a viable corporation, independent of George I. Norman?

The United States will attempt to show, and I think we will be able to show, from testimony of former officers and employees of the corporation that there was never any intention to do business; in fact, no business was ever done. Not one car was leased. They never did any type of business for which they were incorporated. In fact, the board of directors did not meet. No stock was issued. In the Government's view this was a sham transaction.

[10] Secondly, your Honor, and I think more important for our purposes, is the action for damages against the individual Internal Revenue Service agents.

This is a point in time in our history where I think it is very popular to be down on the Government and down on the Government agents and to be worried about Constitutional rights. I certainly agree that Constitutional rights should be safeguarded, but I also agree that conscientious men doing their jobs should not be subjected to personal damages.

We will show that the Internal Revenue officers and agents involved in this case, after very thorough deliberation and upon advice of counsel, were of the opinion that the premises that were seized were as assets of a taxpayer corporation real estate and which we also felt was the alter ego of George I. Norman.

Apparently the premises were investigated, and we found out after one night that some of the assets were missing. In order to prevent losing the assets again, we went in to seize the assets, not books and records, the assets.

It turned out, as they seized the furniture and other tangible assets, that there were books and records.

The testimony will show that the books and records were packed up without being looked at. The reason they

[11] packed up the books and records was because, while the books and records may not be considered tangible assets which can be seized by a levy, we do—and oftentimes it has been done—investigate the records to see if there are stock certificates, money, other accounts receivable. So in that sense they were seized. But the Internal Revenue agent who made the assessment against Mr. Norman will testify that this information that was seized did not in fact influence him in making his assessments, which were in fact made before the seizure.

The United States has also answered the allegations of the complaint and counterclaimed. We have asked this court to hold with us that the plaintiff corporation is in fact an alter ego of George I. Norman, and we ask that the cars may be sold in satisfaction of Mr. Norman's liability.

Finally, with respect to the claim in intervention, the son of the taxpayer, George I. Norman, III, the plaintiff in intervention in this case, apparently had received some stock from a certain Mr. Salazar, who is now incarcerated in the federal penitentiary.

Mr. Salazar has made representations to the United States Marshal and to the Internal Revenue Service that he in fact never transferred any stock certificate, and it was his opinion that George I. Norman, Jr., father [12] of the intervenor, had signed his name on these, as he had done in the past.

So the picture that plaintiff's counsel paints of the IRS "swooping down and grabbing everything in sight" I don't think is accurate. They are doing their job. They looked for assets.

* * *

BERT APPLEGATE

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEEDY:

Q. State your name, please. A. Bert Applegate.

Q. And your address? A. 1810 South Main Street, Salt Lake City, Utah.

Q. Are you employed, Mr. Applegate? A. Yes, I am.

Q. By whom? A. The Internal Revenue Service.

Q. What is your position with the Internal Revenue Service? [13] A. I am a group manager.

Q. What is the particular group that you manage? A. It is a group of revenue officers in the Salt Lake City District.

MR. LEEDY: Your Honor, prior to proceeding—I had forgotten two matters. The defendants are willing to stipulate to the introduction of this exhibit.

THE COURT: What is the number?

THE CLERK: No. 1.

MR. LEEDY: Plaintiff's Exhibit 1, your Honor, which is a certification from the Secretary of State's office that G. M. Leasing Corporation is in good standing, together with certified copies of their articles of incorporation.

THE COURT: Received.

(The document marked Plaintiff's Exhibit No. 1 for identification was received in evidence.)

MR. LEEDY: Further, your Honor, the defendants are willing to stipulate that the named individuals in the complaint, the named defendants in the complaint, with the exception of Roland Wise, are all employees of the Internal Revenue Service and all participated in the search and seizure at 4751-4753 Holladay Boulevard.

MR. ANDOLINA: That is correct.

THE COURT: Very well.

[14] Q. (By Mr. Leedy) Mr. Applegate, calling your attention to March 21 of 1973, did you have occasion to be at the premises of 4751-4753 Holladay Boulevard? A. Yes, I believe I was. I believe that was the date.

Q. What occasioned you to go out to that place? A. I had a call from two of my revenue officers—I believe that was two. They were at the premises investigating the Norman case, and they requested me to come out and give them some assistance.

Q. And they indicated at that time that they had broken the locks to the garage door, is that correct? A. At the time they called me they didn't indicate that, no.

Q. Did they indicate that they had found anything at the premises? A. Yes. They indicated that they had found high-priced automobiles in the garage and were contemplating what to do about the building and perhaps seizing the assets of the building there.

Q. Do you recall the names of those two individual revenue agents who called you? A. I believe it was John Haacke and Joe White.

Q. Prior to going to the premises did you obtain a search warrant or a summons? A. No, I did not. It is not common practice for us to use these.

[15] Q. Did you eventually arrive at the premises? A. Yes, I did.

Q. About what time was that? A. I am just estimating, maybe around four o'clock.

Q. And prior to going did you call certain persons to accompany you? A. No. Clesse Hilton, who was in the office at the time—another revenue officer was there, so he decided to accompany me out there.

Q. When you arrived, who was present? A. There were several people there. John Haacke and Joe White were

there. There were some locksmiths there, two or three people I didn't know. Later other people came.

Q. And later other people from the IRS came, did they not? A. This is true.

Q. When you first arrived, what did you observe? A. I observed, like I say, several people milling around. There was a maroon Stutz car in the garage. I believe it was maroon. It might have been blue or a different color, I am not sure. The locksmiths were there, and people were just there.

Q. Had the garage been broken into at that time? A. Yes, the garage had had the lock removed from it by the locksmiths, and the door was open.

Q. There were no windows in the garage so you could observe [16] the contents without breaking the locks, were there? A. This I am not sure of. I couldn't testify to that.

Q. Thereafter was a decision made to break the locks on the cottage door and enter into the premises? A. This was done prior to my getting there. But the house had been entered into by the locksmiths, and that was just momentarily before I got there.

Q. Upon arriving there did you have occasion to have a conversation with anyone concerning what might be in the cottage? A. Yes, sir, I did.

Q. Who was that? A. I believe it was Mr. Haacke and perhaps Mr. White, and I think maybe there was a special agent there, too. I am not sure.

Q. And you also had occasion, did you not, to have a conversation with a Mr. Leon Ridd while you were there? A. Yes, I did.

Q. And from those conversations you learned, did you not, that the cottage contained personal records of the taxpayer and also of the plaintiff corporation? A. No, I didn't obtain that information from them. In fact, I

didn't know that information at all. I merely made observations myself and then made a decision as to what perhaps we should do.

[17] Q. Well, was it your own observation that the cottage contained books and records that were personal to the taxpayer and the plaintiff corporation? A. I have no idea what was there. I didn't look at any books and records. All I could do was observe the general surroundings.

MR. LEEDY: Your Honor, I would move to publish the deposition of Bert Applegate, if I may.

THE COURT: All right, it may be published.

Q. (By Mr. Leedy) Mr. Applegate, I call your attention to your deposition taken September 19, 1973, at my office and ask if you recall giving that deposition. A. Yes, I do.

Q. I will ask you to turn to page 16 of that deposition and ask if you want to revise your testimony concerning whether or not you felt there were personal records in that premise. A. Which paragraph are you referring to?

Q. Start on line 8, with that answer. A. I don't think I need to revise my statement. This clarifies it more than what I have generally said.

Q. Do you want to add to it then? A. About talking to Mr. Ridd?

Q. About finding out whether or not the cottage contained personal records of business transactions of the taxpayer. A. Well, all I can say is we did not look around; we did not [18] look at the records; we could observe—

THE COURT: This isn't very useful to me, Mr. Leedy. I don't know what the thing says, so I think the way to proceed—and we do it ordinarily—is to read what that deposition says to him and ask him if he made those answers at that time in response to those questions, and then I will know what we are talking about.

MR. ANDOLINA: Your Honor, if it please the Court, I have an extra copy.

THE COURT: No, I want to proceed in our own way.

Q. (By Mr. Leedy) Commencing on line 8 of that deposition, Mr. Applegate, did you answer:

"Okay. But you might be interested in this. I'm not sure if there is a window there or not so they could see that there was a car. I don't know this. But they had determined that there was this car in there, so I believe that they cut the lock off. In fact, Mr. Norman was—George Norman, III, was excited about the removal of his lock. We talked to Mr. Ridd and found out a lot of information about the premises.

"Question: What information did you find out from Mr. Ridd?

"Answer: We asked him what the place was used for. He indicated it was the offices, or the place where Mr. Norman had offices, sometimes employees, and that's [19] where he was and carried out much of his business."

Was that your answers to those questions? A. That is true. We interviewed Mr. Ridd.

Q. In reading that answer it appears you had occasion to talk to Mr. George Norman, III, the intervenor in this action, while you were at the premises, is that correct? A. This is true.

Q. Will you tell me what occurred then. A. Yes. He arrived shortly after I did and wanted to know what was going on. And, again, this has been ten or eleven months ago. It is hard to remember exactly what took place. But he wanted to know what we were doing there also. I told him we were seizing the car and contemplating seizing the assets there in the building structure. At that point he was quite upset about our cutting off one of the

expensive locks, or the locksmith's removing the lock. I don't know how they removed it. He also said, "Well, this car belongs to G. M. Leasing, which is a corporation," as I remember.

I asked him if he could get the title and the registration of the car so we could see how it was registered, at which time he looked for it and couldn't find it. There was quite a lot of question at that time as to the ownership of the car and other things surrounding our being there, so at that point I talked to him and indicated: Would he please get us a copy of the registration so we [20] could verify ownership of the car. He said he would. At that point we left from the premises, or shortly thereafter.

Q. Well, now, you were in the premises, inside, the interior of the cottage, or the offices of the plaintiff corporation, and you made a decision that you should leave those premises, too, is that correct? A. Well, I did.

Q. And what did you base that decision on? A. We were two days into an investigation at this point, and we had several things probably at that point which indicated that we should take actions that we were taking. It was our understanding, or at least the people who originally opened up the building—and I wasn't there—that this was an office building, it contained assets, perhaps furniture, high-priced things, cash, stock certificates, assets belonging to the taxpayer. It was determined that it was not a residence, that it was a business that had nobody there, may contain valuable assets, and they should go ahead and make the seizure of the assets to protect theproperty.

At the time I got there I walked in and it looked to me like this perhaps was the case, but so much was happening at that point. They just went in. There was a

room there with a table in it, had a stove and an icebox, so I said, "You are sure this is not a personal residence?"

He said, "Yes, we are sure it is not. It is an [21] office," etc.

About that time George Norman, III, came along, Mr. Ridd came along, a lot of talk going on. To tell you the truth, I wanted to be sure of what we were doing and to not violate anybody's Constitutional rights by seizing anything we shouldn't be seizing. So I said, "You guys, until we can resolve all this, let's lock the doors up again and leave," which we did, along with everybody else. I don't think we were in the building more than a very few minutes.

Q. You had the locks changed back to the original locks, is that correct? A. Yes, we did.

Q. Thereafter, you or someone in the Internal Revenue Service made a decision to have another raid of the cottage, is that correct? A. A seizure was again made of the same place two days later but it was not a raid.

Q. How many agents were there? A. I am not sure. I was not there. I specifically assigned two people to go there, two or possibly three.

Q. And partially your reason for going out there to seize the premises was to seize the personal books and records of the taxpayer, is that correct? A. No, that is not correct. There were several things [22] leading up to the decision to seize the house. It was all done at the advice of our counsel after much discussion of several factors, but it was not specifically to seize books and records at all.

Q. That wasn't even a portion of your going out to make that seizure? A. No. It possibly could have had a residual thing, since we were there, there they were; as was stated before, they could be valuable in uncovering assets, books and records. But, at the advice of our

counsel, once we found the books and records there, these were boxed up, sealed, and put in a vault at Redman Moving and Storage without being examined.

Q. So, if they weren't going to be examined, you knew you couldn't find any assets in them, isn't that correct? A. Well, we weren't going to release them. We thought possibly we could look at them later, once we got clearance through proper authority or people on the case.

* * *

[24] PHILIP JAMES CLAYTON

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEEDY:

Q. State your name, please. A. Philip James Clayton.

Q. And your address? A. 919 Fairview Avenue, Salt Lake City.

Q. Are you employed, Mr. Clayton? A. Yes, I am.

Q. In what capacity? A. A revenue agent with the Internal Revenue Service, Salt Lake City District.

[25] Q. What does a revenue agent do? A. Investigates tax liability through audit of taxpayer's records or through independent third-party sources.

Q. Did you have occasion to perform an audit on Mr. George I. Norman, Jr., and his wife Frances Norman? A. No, I did not perform an audit in the usual sense of the word.

Q. Did you perform an examination? A. I was given the assignment to investigate the tax affairs of Mr. Norman after we had found out he was a fugitive and after we had also found out he had not filed tax returns for 1970 and 1971.

* * *

Q. You performed this same sort of function, did you not, on Mr. Norman for the years 1964 through 1967? A. That is correct.

Q. And in connection with that audit, the 1964 through 1967 audit, you discovered, did you not, that Mr. Norman had extraordinary business expenses in connection with his business? A. That is correct.

* * *

[28] Q. You prepared the assessments, did you not, of 1971 which are in question in this lawsuit? A. Yes.

Q. In connection with those assessments you gave Mr. Norman no credit for any business expenses, did you? A. That is correct.

Q. But you found out through your prior audit that he had extraordinary business expenses, did you not? A. Yes, he had, I would say, high business expenses, perhaps in relation to his income, yes.

Q. And most of the items of income you found on your 1970-71 audit was from the sale of securities, is that correct? A. That is correct.

Q. And yet on many of those sales of securities you gave him no credit or basis on the stock, is that correct? A. I think the majority of the stock that he sold in 1970 and '71 we did give him basis. There were some stocks we did not give him basis since we could not determine that basis.

Q. On some of those stocks you had already determined what the basis was in your prior audit, is that not correct? A. No, that is not correct.

* * *

[29] Q. You were also aware, were you not, of some 290 thousand dollars Mr. Norman had paid for taxes in 1971 for the year 1971, isn't that correct? A. That is correct.

Q. But you gave him no credit for that 290 thousand when you prepared the assessment, isn't that correct? A. The Service Center had received that payment but had not made the assessment up at the Service Center. Mr. Norman, was told by the Service Center, would get credit for that upon payment of the tax. The assessment had not been made, so, no, we did not give him—take into consideration that payment.

Q. And when the demand for payment was made on Mrs. Norman it did not reflect the fact that Mr. Norman had already paid [30] 290 thousand dollars, is that correct? A. Well, in the sense that you state that, yes.

Q. You also had found out, had you not, that certain of the items you included as sales of stock, and particularly one for 115 thousand dollars, was not in fact a sale, isn't that correct? A. That is correct.

Q. After making your assessment, Mr. Clayton, were you the one who recommended that this would be a jeopardy assessment? A. No.

Q. Who made that recommendation? A. I believe that authority has to come from Mr. Roland Wise, our district director.

Q. But who requested that he make that determination? A. That request was made by the chiefs of our various divisions.

Q. Did you request that the chief of your division determine that this be a jeopardy assessment? A. I asked that he investigate the possibility, yes.

Q. After the assessment and the declaration of the jeopardy assessment you went on the raids, did you not? A. No. I participated in one of the seizures, but I was not involved in both of them.

Q. Well, you entered 4751-4753 Holladay Boulevard, did you [31] not? A. Yes.

Q. Mr. Clayton, your job is to investigate tax liabilities. Why did you go along on that raid? A. I was requested by Special Agent Tim Elison, who was the investigating officer for the Intelligence Division, to accompany him on the seizure.

Q. Isn't this highly unusual for a man in your position with the Internal Revenue Service? A. This was a very unusual case, might I add.

Q. Will you answer my question. A. Yes, I would think it is somewhat unusual.

Q. Have you ever gone on a seizure raid before? A. No.

Q. Did you have occasion to look at the evidence and the books and records that were seized? A. Some three to four months later, yes, when we received permission from our counsel to open them.

Q. Let me ask you this, Mr. Clayton: Were you involved in the first entry or the second entry into the cottage? A. It would be the second entry.

Q. Can you give me the date? A. I believe it would be March 23, Friday.

Q. Will you tell me when it was that you arrived at the cottage. [32] A. It would have been approximately 1:45 or two o'clock.

Q. Were you one of the first to arrive or were people already there? A. There were individuals already there.

Q. How many Internal Revenue Service agents in total participated in this raid? A. There were two revenue officers that were there at the office building of the Razor Edge because of an automobile that was in the garage at the front there, in front of the cottage. That was Revenue Agent Haacke and Revenue Agent Joe— Revenue Officer Haacke and Revenue Officer Joe White. I was in the presence of Special Agent Tim Elison. Special

Agent Ron Harrington and Special Agent Tom Harkness and Special Agent Lawnie Mayhew were there also.

Q. In addition to that had not the Internal Revenue Service called locksmiths to also be there? A. Yes. Some locksmiths came later.

Q. In addition to that did they not also call a semitruck to load all the items that they seized into— A. No. It was a Redman Storage van.

Q. After arriving there can you tell me what occurred. A. Yes. We waited outside until the locksmiths came and opened the premises, and then I was told that we had received instructions from our counsel to seize the property therein, including any books and records which might be [33] present, which was one of the reasons I was there for.

Q. You were there for the purpose of seizing the books and records? A. If there were any, yes.

Q. You had already been advised, though, hadn't you, the books and records were to be sealed? A. We were given instructions that, if there were any records present in the office, that we were not to look at them or investigate them, but we were to wait until the Redman Van and Storage came and then put them into their boxes, with their assistance, and have them seal them.

Q. If the boxes were going to be sealed and no one was going to look at them, why were you out there? A. I guess to assist with putting the records in. Also, as I mentioned, I was requested to attend with Special Agent Tim Elison.

Q. Did you ever have occasion to go to the Norman residence? A. No. Do you mean prior to this time?

Q. No. In connection with this. A. Yes. Upon returning the records some several months later, yes.

Q. That was the day after I filed the complaint in this case isn't that correct? A. I am not aware of when that would have been.

Q. And prior to returning those records did you not open [34] them up and copy them? A. Yes. We were asked by our counsel to photocopy the records, this is true.

Q. Then you have had occasion to look at those records that were sealed, have you not? A. After that time, yes.

Q. You have also decided, have you not, that there should be additional income in the 1971 assessment that you made against Mr. Norman? Isn't that correct? A. That is correct.

Q. Didn't that information come from looking at those seized records? A. No, it did no

MR. LEEDY: I think that is all.

CROSS-EXAMINATION

BY MR. ANDOLINA:

Q. Did George Norman file a return in 1971? A. No, he did not.

Q. What information did you use to base that deficiency on? A. I based my deficiency upon an examination of third-party records, from brokerage statements of stock firms.

Q. Were you able to get any cooperation at all from the taxpayer? A. No.

Q. When was the assessment made against Mr. Norman? [35] A. It would have been on Monday, March 19, 1973.

Q. Did you use any portion of the seized books and records in making your assessment? A. No, I did not.

Q. Have you since used any portion to re-evaluate? A. No, I have not.

Q. Can you tell me how many—the extent of the books and records of G. M. Leasing that were seized? A. The extent of the books and records of G. M. Leasing

that I am aware of consisted of a few documents as to ownership of the vehicles and then one bank account consisting of only a very few checks that were written on the bank accounts.

Q. So there weren't books and records? A. There were not.

* * *

[38] GEORGE HENRY

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

[39] DIRECT EXAMINATION

BY MR. LEEDY:

Q. State your name, please. A. My name is George Henry.

Q. And your address? A. 3662 Oakview Drive.

Q. Are you employed. Mr. Henry? A. Yes, sir.

Q. And by whom? A. By the Internal Revenue Service.

Q. And are you acquainted with the individual defendants in this action? A. I am acquainted with Mrs. Norman and George, Jr.

Q. I said the defendants, the Internal Revenue Service. A. Oh, yes.

Q. You are also acquainted with Mr. Tuttle, who is an officer of G. M. Leasing Corporation? A. I am acquainted with Mr. Tuttle. I was not aware that he was an officer of G. M. Leasing.

Q. Are you aware of the arrangement made by the IRS where, after seizure of all the cars, they were to allow Mrs. Norman to use one of the cars? A. Not an arrangement. I was aware—

THE COURT: Tell us what happened.

THE WITNESS: What happened?

[40] THE COURT: About that.

THE WITNESS: Well, I know Mrs. Norman was driving a Jaquar.

Q. (By Mr. Leedy) Are you aware of a later decision to take that car away from her? A. Yes, I am aware it was taken away.

Q. Did you overhear some revenue officers talking about taking that car away from her? A. I overheard that they had taken the car away from her.

Q. And is it not true that they laughed about the harassment that they were causing her? A. There was laughter.

* * *

[January 14, 1974]

[45] GEORGE I. NORMAN, III

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEEDY:

Q. State your name, please. A. George I. Norman, III.

Q. Your age? A. Nineteen.

Q. And your address, Mr. Norman? A. 2501 Olympus Drive.

Q. And are you the intervenor in this matter? A. Yes.

Q. And were you the owner of certain Emdeco stock that was seized by the Internal Revenue Service? A. Yes.

Q. And where was that stock seized? A. At Atlas Stock Transfer Agency.

Q. Do you know how many shares it was? A. Yes. Seven thousand one hundred forty-three shares.

[46] Q. What was the market value of that stock on the date of the seizure? A. Thirty-five hundred dollars.

Q. Are you acquainted with the plaintiff in this action, G. M. Leasing Corporation? A. Yes, I am.

Q. In what capacity are you acquainted with it? A. I am a shareholder and president of G. M. Leasing Corporation.

Q. Are you aware of where G. M. Leasing Corporation maintained its offices in March of 1973? A. Yes.

Q. Where was that? A. At 4753 Holladay Boulevard.

Q. And are you acquainted with what the assets of that corporation were on that date? A. Yes.

Q. What were those assets? A. A two-door Stutz blue motor car, a two-door tan Stutz blue motor car, a four-door Stutz burgundy motor car, a two-door Stutz burgundy motor car, a Rolls Royce 1965 limousine, a 1929 Rolls Royce Phantom I, and a 1972 Jaguar sedan.

Q. Did it also maintain a bank account? A. Yes, it did.

Q. Where was that? [47] A. At Zions First National Bank.

Q. And were there funds in that bank account? A. Yes, there were.

Q. And were the assets of G. M. Leasing Corporation seized by the Internal Revenue Service? A. Yes, they were.

Q. Do you know where those assets are now located? A. Yes. Two assets, the four-door Stutz motor car and the two-door Stutz tan car is in California. That was turned over by the Internal Revenue to Murray First Thrift for liquidation on a chattel note. And the remaining four cars are over at the Broadway Motor Garage.

Q. I assume the funds are still in the bank. A. The bank seized the funds.

Q. Do you have a value you would place on the two cars that were sold by Murray First Thrift pursuant to the IRS levy? A. Yes. The two-door tan has a value of $30,000, and the four-door Stutz burgundy has been quoted at a hundred thousand dollars.

Q. Calling your attention to March 21 of 1973 did you have occasion to be in the vicinity of 4751-4753 Holladay Boulevard? A. Yes.

Q. What time of the day was that? A. I believe that was in the afternoon?

[48] Q. What did you observe, if anything? A. As I drove up to the office, I noticed several agents about the grounds. As I stepped out of the car I was approached by four agents. Mr. Applegate presented himself as the head of the assessments division and told me he was there to seize assets of George Norman, Jr.

The cottage door was standing open and the garage had been broken into. There was a locksmith inside the garage attempting to hotwire the Stutz motor car.

Q. Did you have a conversation with Mr. Applegate at that time? A. Yes. I told Mr. Applegate this was an asset of G. M. Leasing Corporation and that it was not an asset of George I. Norman, Jr. Mr. Applegate replied that he would like to see the registration. I looked inside the car. The registration was not there. And upon that he left.

Q. What next occurred with respect to matters involving this lawsuit? A. I made a request as he left for the lock that was concealing the Stutz car in the garage. He did not know where it was and gave me a lock, which he held a key and gave the key to me. Upon this--after the Internal Revenue left, I removed the car from the garage and had it stored at a friend's house.

* * *

[49] Q. The following day did you have occasion again to be near the office of G. M. Leasing Corporation? A. Yes.

Q. What did you observe, if anything, at that time? A. Friday I was returning back to the office, which is also my residence. I was living there as security. The cottage had been broken into. Furniture was being packaged. The

office had been broken into. The records had been removed. And I was told to take my personal possessions and move out.

Q. Did you do that? A. Yes, I did.

Q. Where did you move to? A. I moved up to my father and mother's residence.

[50] Q. That is 2501 Olympus Drive? A. Yes, 2501 Olympus Drive.

Q. Did you have occasion to be confronted by the IRS at that residence? A. Yes. Saturday.

Q. That is the following day? A. Yes.

Q. Tell me what occurred. A. Seven cars pulled up. Fourteen agents, I noticed, in total were out of the cars. They were approaching the front entrance of the house, did it in such a manner as to where they were probing the locks. I was told that, if I did not come up with the burgundy Stutz car, I would be charged and thrown in jail and that the house would be seized and my mother and the children of the family would have to find residence elsewhere.

Q. In response to that threat did you inform them of the location of the burgundy Stutz? A. Yes.

Q. What happened next? A. The Internal Revenue agents made a request that they would like to inventory the house and, if I did not permit them, they were going to anyway.

Q. Did you then allow them to inventory the house? A. Yes, I did.

[51] Q. Will you describe what occurred. A. It was done in such a manner as to where they brought in different various small tape recorders where they verbally went about and described the accessories in the house and photographed the furniture, the paintings, etc.

* * *

[64] RICHARD HEAD

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. State your name, please. A. Richard Head.

Q. Address? [65] A. 276 Mountain View Drive.

Q. Are you employed, Mr. Head? A. I am a student at the University of Utah.

Q. Did you have any prior employment? A. Yes.

Q. Will you state that, please. A. Last year I worked for two firms as a salesman. Prior to that I worked for George Norman, Jr.

Q. Were you also related to George I. Norman, Jr.? A. Yes, I was—George and I married sisters, and I was married to Frances Norman's sister for ten years.

* * *

Q. (By Mr. Andolina) Did you have daily contact with Mr. [66] Norman? A. Yes.

Q. Were you aware of the various luxury automobiles that he owned? A. Yes.

Q. Did you have any duties with respect to those automobiles A. Not specific, no. At various times, yes.

Q. Did you, for instance, ever make sure the cars got washed? A. Yes, when requested to.

Q. Did you drive those cars? A. On those occasions.

Q. Were you allowed to liberally drive the cars? A. No.

Q. Was anyone, to the best of your knowledge, allowed to? A. No.

Q. Do you know how the cars were acquired? A. I know—well—

MR. LEEDY: That can be "yes" or "no," your Honor, I think.

THE COURT: You can answer that "yes" or "no." Do you know how they were acquired?

THE WITNESS: Some of them.

Q. (By Mr. Andolina) Would you tell, as to the cars you know, how they were acquired. Would you state how they were acquired.

[67] MR. LEEDY: Objection. No Foundation, your Honor.

THE COURT: Do you know how they were acquired?

THE WITNESS: I know how two of them were acquired.

Q. (By Mr. Andolina) Would you please state how the cars, to your knowledge—how they were acquired. A. I think the Brougham Stutz was acquired by Mr. Norman himself and also the—

MR. LEEDY: I object. There is no foundation so far to show how he knows.

THE COURT: We have to start somewhere. Now go ahead and finish your answer. A. (Continuing)—and the Phantom V Limousine, Rolls Royce limousine, was acquired at George's instructions through Richard Ringwood.

Q. (By Mr. Andolina) Do you know who originally had title to these cars? A. Originally had title?

Q. Yes. A. Well, the Brougham Stutz originally, I believe, was in Mr. Norman's name and subsequently transferred to G. M. Leasing. The Phantom V—I am not sure how the registration was handled on it.

Q. To the best of your knowledge, were the luxury cars owned by Mr. Norman ever leased or used for any business purposes? A. I would say that they were not—to my knowledge none of [68] them were ever leased. As far as business purposes were concerned, they were part of George's business. I mean, in other words, they were

part of his advertising campaign, or whatever you want to call it, so people knew who he was and associated him with the cars.

Q. You are talking now about George Norman individually? A. Yes.

Q. Not G. M. Leasing? A. Yes.

* * *

[69] KATHARINE HEAD

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. State your name, please. [70] A. Katharine Head.

Q. And your address? A. 276 Mountain View Drive.

* * *

Q. When did you first meet George Norman? A. About four years ago.

Q. Under what circumstances? A. I was introduced to George by a business associate of his who wanted me to type some curriculum, and at that point Mr. Norman indicated that he needed a part-time secretary and asked me if I would work for him and I told him yes.

Q. What duties did you perform for Mr. Norman? A. Just various secretarial duties.

Q. Did these duties include working for any of the associated corporations? A. Yes.

[71] Q. Do you know the names of those corporations? A. Commercial Properties, I did work for G. M. Leasing, and there was one other one, but I can't remember the name.

Q. You are familiar, then, with the plaintiff corporation, G. M. Leasing? A. Yes.

Q. Were you an incorporator and director of the corporation? A. Yes.

Q. Under what circumstances did you become an incorporator? A. George asked me if I would be an incorporator, and I told him yes.

Q. Did he explain to you the duties and responsibilities of such a position? A. No, he did not.

Q. Did he tell you what business it would be in? A. No.

Q. Did you receive any compensation for your duties as a director and incorporator? A. No. Just what George paid me as a secretary.

Q. Did you ever attend a meeting of the board of directors of G. M. Leasing Corporation? A. No.

Q. Do you khow if any board of directors meetings were held? A. I don't know.

[72] Q. Were you issued any stock of G. M. Leasing? A. No.

Q. Do you know if any stock was issued? A. I don't know.

Q. Did you participate in running the affairs of G. M. Leasing? A. No, only to the degree that I would write a check if he asked me to.

Q. Upon whose initiative did you write the check? A. Mr. Norman's.

Q. Did anyone other than Mr. Norman participate in running the business of G. M. Leasing? A. Not that I am aware of.

Q. Did G. M. Leasing Corporation have any employees? A. No.

Q. Do you know if any cars were leased by G. M. Leasing Corporation? A. Not to my knowledge.

Q. As Mr. Norman's secretary you had access to the files of related corporations and G. M. Leasing? A. Yes.

Q. Were you familiar with the files of G. M. Leasing? A. At the time I worked for him I was.

Q. Could you explain specifically what those files contained. A. The files contained bank records of the bank accounts. [73] They contained some purchase agreements of the cars and the articles of incorporation.

Q. Was there any evidence in the files of any business transacted by G. M. Leading? A. Not in the files I had, no.

* * *

[74] WALLACE EDDIE LARRABEE

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. And your home address? A. 3665 East Little Willow Drive.

Q. Your business? A. I run an American Oil Service Station.

Q. What is your business address? A. 2322 East 4500 South.

Q. How long have you maintained a service station at that address? [75] A. About five and a half years.

Q. Do you know George I. Norman, Jr.? A. Yes, sir.

Q. When did you meet him? A. Oh, probably about four years ago.

Q. Under what circumstances? A. I had become familiar—knowing who he was by sight, and one day I seen him down town in a restaurant, and I went over and introduced myself and asked for his business.

Q. Were you in fact awarded his business? A. In time, not immediately, but within the next ninety days maybe.

Q. What did Mr. Norman's business entail? A. Caring for his cars and storing a couple of them.

Q. Which cars specifically, Mr. Larrabee? A. I took care—when I first started I took care of a limousine which

he had, a 1968 Cadillac Limousine, and I think he also had a couple of El Dorados at the time that I took care of.

Q. Did you take care of any of the luxury cars, the Stutz and Rolls Royce? A. As he acquired them.

Q. Also did you take care of the family cars? A. Yes.

Q. So, as far as you knew, all the cars that he had you [76] would service? A. Yes.

Q. You mentioned you stored the cars. Why did you do that? A. Well, he didn't have any place to keep them at the time. He was building his home and he didn't have garages to keep them in.

Q. Do you know who was the owner of those cars, titled owners? A. No, I am not sure. Making out inspection certificates, and so on, I would see at first "Commercial Properties" on most of them. Eventually some of them did become "G. M. Leasing."

Q. To the best of your knowledge were any titles in George I. Norman himself? A. Not to my knowledge.

Q. Was one of the cars you serviced a 1929 Jaguar KKE? A. No.

Q. I'm sorry, not 1929, a modern Jaguar XKE? A. I don't believe I did any service work on it. They purchased gas for it, and so on. I don't believe I ever serviced it.

Q. You are familiar with the car? A. Yes.

Q. I see. Is your service station located near the Norman residence? [77] A. Within two or three blocks.

Q. Were you able to observe the Jaguar at the Norman residence? A. Oh, yes.

Q. What type of use was the Jaguar utilized for? A. I believe that was Mrs. Norman's car.

Q. Was there a chauffeur for that car? A. No, not to my knowledge at any rate.

Q. Were you ever allowed to drive any of the luxury cars? A. Yes.

Q. Do you know if anyone else was? A. Oh, yes.

Q. What was Mr. Norman's attitude toward allowing other people to drive his cars?

MR. LEEDY: Objection, your Honor, calling for a conclusion.

THE COURT: An attitude is a conclusion. Sustained.

Q. (By Mr. Andolina) Who paid your bills, Mr. Larrabee? A. I received checks from Mr. Norman through the mail, possibly through Mr. Head, sometimes Mr. Norman's son would deliver them.

Q. Did you receive checks or payment in cash? A. Checks.

Q. Do you know who the checks were drawn on? [78] A. Commercial Properties for quite some time, and I received a couple of checks from G. M. Leasing.

MR. ANDOLINA: I have no further questions.

CROSS-EXAMINATION

BY MR. LEEDY:

Q. Mr. Larrabee, you described in your testimony, I think, three types of cars: the limousines, the family cars, and the luxury cars, is that correct? Isn't that what you testified to? A. Yes.

Q. The family cars which you described were the ones used by the family, isn't that correct? A. Yes.

Q. And they do not include what you term the luxury cars, is that correct? A. No.

* * *

[79] SHIRLEY P. JONES, JR.

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. Will you state your name, please. A. My name is Shirley P. Jones, Jr.

Q. And your address, Mr. Jones? A. 2766 St. Mary's Way, Salt Lake City, Utah.

Q. Your occupation, sir? A. I am an attorney licensed to practice in the state of Utah.

Q. How long have you been an attorney in the state of Utah? A. About twenty-five years.

Q. Are you familiar with the corporation known as G. M. Leasing Corporation? A. Yes. I prepared the articles and did the legal work in connection with the formation of that company.

Q. We recognize you are an attorney, so we will attempt to avoid any conflict problems there. You also served in another capacity for G. M. Leasing, is that correct? A. I was an incorporator and was one of the three members of [80] the initial board.

Q. As a member of the board did you ever attend a meeting of the board of directors? A. There were never any meetings held.

Q. Were you ever issued any stock? A. There was never any stock issued in the company.

Q. What were the assets of the corporation during the time that you were the secretary-treasurer? A. The corporation was formed in April of 1972, and the only assets that I am ever aware of were four or five of these luxury or vintage model automobiles. And to the best of my recollection those automobiles didn't come into the company until at or near the end of 1972.

Q. Did G. M. Leasing ever transact any business? A. None that I knew of.

Q. Were you ever compensated for your services as secretary-treasurer or as a director of G. M. Leasing? A. No.

Q. What were your duties as secretary-treasurer of the corporation? A. I never was secretary-treasurer of the corporation. On one occasion I acted as vice president and secretary in connection with a loan that was made to the company on the automobiles as security in December of 1972.

Q. I understand. What were your general duties then with [81] respect to the corporation? A. I had no duties with respect to the corporation other than to form it and to give advice with reference to what should be done with it. I was not the company's attorney either. To my knowledge, the company never had any attorney as such. It never transacted any business.

Q. Mr. Jones, I am handing you a copy of a status report filed with the Utah Division, Department of Employment Security, showing that there were no wages paid by G. M. Leasing Corporation. Would you identify that as a copy of your signature. A. Yes, sir, it is.

MR. ANDOLINA: Your Honor, at this time I would like to offer in evidence Defendants' Exhibit No. 2, which is a status report filed by Mr. Jones for the Utah Department of Employment Security.

THE WITNESS: Let me look at that again.

MR. LEEDY: I have no objection, your Honor.

Q. (By Mr. Andolina) Did you prepare this report, Mr. Jones? A. I signed it. I don't think the writing above is—

THE COURT: Counsel hasn't any objection to it. Why don't you offer it.

MR. ANDOLINA: At this point I offer it in evidence, your Honor.

THE COURT: Received.

[82] (The document marked Defendants' Exhibit No. D-2 for identification was received in evidence.)

MR. ANDOLINA: Thank you. At the same time, your Honor, I would like to have marked for identification as D-3 a certified copy of the State of Utah Sales and Use Tax Return, showing no sales or use taxes were paid by G. M. Leasing Corporation. Mr. Jones did not execute that particular document.

MR. LEEDY: No objection, your Honor.

THE COURT: Received.

(The document marked Defendants' Exhibit No. D-3 for identification was received in evidence.)

Q. (By Mr. Andolina) Mr. Jones, I would like to read you paragraph 9 of Plaintiff's second amended complaint, and I want you to tell me if this is a true statement.

"One of the individual defendants, the name not being known to plaintiff, contacted one Shirley P. Jones, attorney at law, who was an officer and director of plaintiff G. M. Leasing Corp., and also was an attorney for George I. Norman, Jr., and requested permission, or advised that they were about to enter the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, and said Shirley P. Jones advised that permission would not be given and that they had no authority in law to enter such premises and further [83] that, if such were done, it would be wholly contrary to law."

Is that a correct statement? A. No, that is not.

Q. Were you contacted by a representative of the Internal Revenue Service prior to the seizure of the cottage? A. No.

Q. When did you first learn of the fact that there was a seizure? A. Well, on that Friday afternoon, which I believe was March 23, I received a call in my office, and I was not there, from someone in the Norman family. It could have been Mrs. Norman. It could have been young George. And upon calling in to my office I was informed there was some trouble out at the house and at the cottage, that there were a lot of Internal Revenue agents there and that there was a problem.

So I went to the house, and there wasn't anyone at the house, so I went over to what was called the cottage, which was the business office of--which was the business office and was also used as a home and as a partial residence. And at that time inside the building and in the office there were several revenue agents, and they were in the process of inventorying and collecting and boxing. So I was particularly concerned about various files and records which [84] were contained there in the office, and I entered and asked what they were doing, and I was informed and shown a seizure notice.

Q. Do you know whom you talked to at this point? A. I am not sure. I think Mr. Clayton was there. I think several of the defendants were there. but I didn't know any of them, and I am not sure about what I said to which agent, but I did observe that files were being taken out of the filing cases and put in boxes and sealed.

Q. Was any employee of the Internal Revenue Service investigating, looking into the file, prior to carrying it out and putting it into the boxes? A. Not that I observed. And I asked them what they were doing, and they said they were seizing them. I said, "Well, you fellows haven't any right to seize business records. You are way out of line on that."

They said, "Well, this is a particular problem."

And I said, "Well, you bet it is."

And they said, "Well, we want you to talk to our attorney, because that is who we are acting under."

I said, "Well, get him on the phone for me."

And I believe they got Mr. Brennan, in the Regional Counsel's office, or someone in his office. I think it was Mr. Brennan. And I asked him, you know, what they were up to. And I was particularly concerned about [85] seizure of records. It appeared, and I knew, that there were seizure levies and a jeopardy assessment had been made the first part of the week. And I had been down to the Bureau and I had seen the seizure and the notices. And my concern was with those records.

Mr. Brennan told me, he said, "They are in the process of all kinds of automobiles, unloading property from the house; they almost ran over one of our agents with one of their automobiles. And we believe there may be money or there may be a lot of stock certificates in those files." And he said, "That is all we are after. We don't care anything about the files, but we want either the money or stock certificates."

I said, "Well, I still think that you are out of line."

And he said, "Well, will you come down tomorrow morning and go through all the files with us and inventory them."

And I believe I said, "Well, I don't know." Because at that point I had no authority to act as attorney for G. M. Leasing Corporation. Mr. Norman was a fugitive. I had had a telephone call from Mr. Norman in which I told him I would not represent him unless he surrendered himself.

* * *

[86] Q. That afternoon did any Internal Revenue agent, officer, or employee harass you in any way? A. No. They were very courteous. They said they were acting [87] under the advice of their attorney. And I asked them to get the attorney on the phone. There was some little fuss around there, and they all stopped and waited, and I had this conversation with him.

* * *

[88] Q. Did you ever advise any agent or employee that it was your opinion that these corporations were merely shells and alter egos of George I. Norman?

MR. LEEDY: I object, your Honor. That is the ultimate conclusion in this lawsuit.

MR. ANDOLINA: We are not asking for the testimony as his conclusion of it, but whether he told an officer so they had a basis for trying to find assets in the corporate names.

THE COURT: I think you can inquire about what Mr. Jones told them. Overruled. A. I wish you could be particular as to which corporation, because I didn't handle all of the affairs of Mr. Norman.

Q. (By Mr. Andolina) G. M. Leasing, specifically. A. G. M. Leasing—if I didn't say it expressly, I said it in effect, because I think that was the situation. It had no assets or property of its own.

* * *

[93] Q. Mr. Jones, did you pay on behalf of George Norman approximately 290 thousand dollars for his taxes in the year 1970? A. He made a deposit into my account, and I wrote a check on my account to pay those taxes in on the last day when they could be paid in to avoid a penalty.

Q. Those moneys were in fact paid to the Internal Revenue Service? A. Oh, yes, they were.

MR. LEEDY: Thank you. Nothing further.

[94] REDIRECT EXAMINATION

BY MR. ANDOLINA:

Q. Mr. Jones, with respect to the check for 289 thousand dollars, you attached it to a return? A. No. It was a request for an extension. Herb Zimmerman prepared—it may have been a tentative return or just an estimated payment or declaration. I don't think it was a full return, because I had worked all afternoon in the office with Mr. Zimmerman; he had called me up there, and we had to get this payment in by four o'clock that day, and that is the reason it was handled in that way.

Q. Mr. Jones, I am handing you Defendants' Exhibit D-4, which is a 1040 U.S. individual income tax return in the name of George I. Norman and Frances M. Norman by Shirley P. Jones. Is that your signature? A. Yes.

Q. Would you look at the other documents and identify that they were sent by you with the returns. A. Yes. This is what Mr. Zimmerman prepared. I recall now—I hadn't thought it was a full return, and it is not. It is just an estimated tax.

MR. ANDOLINA: Your Honor, I would offer into evidence Defendants' Exhibit D-4.

MR. LEEDY: No objection, your Honor.

THE COURT: Received.

* * *

[96] FLOYD LaMAR MOODY

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. State your name, please. A. Floyd LaMar Moody.

Q. Your address? A. 2579 Wilmington Avenue.

Q. What is your occupation? A. Car salesman.

Q. By whom are you employed? A. I work for Schettler-Williams. They are at 702 South Main.

Q. What type of cars do they sell? A. They sell the Jaguar, the Triumph, Datsun, and Volvo.

Q. Did you ever meet George I. Norman, Jr.? A. Junior?

Q. Yes. A. Yes.

Q. Under what circumstances? A. He come in and purchased a 19–I believe it was a 1973 "Jag" from us.

Q. Did he discuss with you the particularities about the car? [97] A. We did talk about the car. The only thing we went over was how the car functioned, the riding and the handling and this type of thing.

Q. How did he pay for the car? A. He wrote a check for the car.

Q. Who was the check drawn on? A. G. M. Leasing.

Q. Did Mr. Norman state to you for what purpose the car was needed? A. My understanding the car was for his wife's own personal use.

* * *

LaVOR RULON WOOD

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

[98] Q. State your name, please. A. LaVor Rulon Wood.

Q. Your Address? A. 38 East 1300 South, Salt Lake City, Utah.

Q. Your occupation? A. Self-employed.

Q. Are you familiar with the corporation known as G. M. Leasing? A. Yes, I am.

Q. What was your capacity in such corporation? A. I was acting president.

Q. Were you also an incorporator? A. Yes.

Q. A member of the board of directors? A. Yes.

Q. Who initiated the formation of the corporation? A. Mr. Norman.

Q. Do you know for what purposes? A. Yes. For leasing automobiles.

Q. Do you know if that purpose was ever carried out? A. Fulfillment, no; attempt, yes.

Q. Who controlled the affairs of G. M. Leasing? A. Mr. Norman and myself discussed the affairs of the corporation daily.

Q. Did you ever attend a meeting of the board of directors? [99] A. There was no official meeting of the board of directors. However, we met every day.

Q. Who is "we"? A. Mr. Norman and myself.

Q. Was any stock issued? A. Not to my knowledge.

Q. What comprised the assets of G. M. Leasing Corporation? A. What comprised the assets of G. M. Leasing Corporation?

Q. Yes. A. To the best of my recollection, a Stutz Brougham sedan, three Stutz two-doors, one Rolls Royce '65 Sedan, one '29 Rolls Royce Phaeton, one Jaguar sedan. I can't recall if the Cadillac limousine were included or not. I don't think so.

Q. Who furnished the money to purchase these cars? A. At what time, sir.

Q. At the initial stage of the corporation and when–as each car was purchased. A. Well, there were cars purchased prior to the organization of G. M. Leasing.

Q. Do you know who purchased the cars prior to G. M. Leasing? A. The cash payments were arranged by Mr. Norman?

Q. How about the cars subsequent to the formation? A. I really can't recall the exact checks. I have tried to recall, but I cannot recall.

[100] Q. Where were the offices of G. M. Leasing? A. We operated out of what was commonly called the cottage.

Q. Did you convey this information to any Internal Revenue agent or officer during the week of March 23? A. I don't recall talking to an Internal Revenue agent. I really don't recall. If I did, I don't recall talking to one.

Q. Did you receive any compensation for your services? A. No, but I was to receive compensation for my services, but I never received payment.

* * *

[103] BY MR. LEEDY:

Q. From your testimony, Mr. Wood, it would be your opinion that this company was formed for the legitimate purpose of [104] leasing cars, is that correct? A. Yes, sir. It was our intention.

Q. Why did the leasing of the automobiles that were owned by G. M. Leasing never occur? A. We never were able to have the automobiles completely ready for leasing. I must have spent almost nine months in preparing the automobiles, and it seemed like with this particular type of car, particularly the Stutz, they were never ready, and we had considerable problems with the dealer that we purchased the cars from. For example, the Brougham sedan--shortly after purchase the engine blew, and they agreed to let us rebuild and put a substantial and proper engine in the automobile. And in the process of that, along with them breaking a glass twice in the automobile that had to be specially prepared and built by hand, we really never had the sedan ready. In fact, at the time they sold the car the one window was still missing in the automobile.

The Stutz two-door Burgundy, we had considerable problems with the paint. They agreed to repaint the

automobile, and it took several months to get the proper paint from Italy to repaint the automobile, and then it had to be hand finished.

The gold two-door, there were numerous small problems. I drove the automobiles between Salt Lake and [105] Ogden, bringing them back and forth, and also used transports to bring them back and forth to get the cars in condition to do anything with.

Q. The reason that no actual leases had been entered into yet is that none of the automobiles were finalized and ready for leasing, is that correct? A. I can only answer that the cars were never ready to be leased, or whatever.

Q. It was your intention and Mr. Norman's intention to lease those automobiles upon their becoming ready? A. That is correct.

Q. In connection with those intentions you testified, did you not, that you obtained lease forms from Jules Meyers? A. Yes. I obtained lease forms and was in the process of preparing our own lease.

Q. And in addition to those jobs you performed other activities in attempting to obtain other cars for G. M. Leasing to lease, is that correct? A. Luxury cars, that's correct.

Q. And also you contacted other people about leasing cars from G. M. Leasing, isn't that correct? A. That I did.

Q. Also did you not inquire about obtaining a Stutz dealership for the state of Utah for G. M. Leasing? A. Yes. In fact, we inquired about having more than one [106] state for the Stutz motor cars. We talked of building a showroom adjacent to the office, right in front of the cottage.

Q. You indicated that, as an officer and director, you talked on a daily basis with George Norman, although

they weren't designated as directors meetings, isn't that correct? A. We met daily or, while I was in California, I would contact him by phone no later than every other day.

Q. And also isn't it true that the director and officer, or acting officer, Shirley Jones was present on many of those occasions? A. Mr. Jones was present on many of these meetings.

Q. And was it not your expectation that upon the leasing of these automobiles you would receive an income from G. M. Leasing Corporation? A. I was told that, if everything worked out fine, an income would be derived from G. M. Leasing Corporation.

Q. And isn't that the reason you spent some eight or nine months in attempting to prepare the cars for leasing? A. I spent my own time and money preparing it, yes.

Q. After the disappearance of George Norman you, on behalf of G. M. Leasing, arranged for the sale of a Rolls Royce automobile, is that correct? A. I did.

[107] Q. What was the sales price of that? A. If I recall, 30 thousand dollars.

Q. And there were no commissions paid? A. No commissions paid.

Q. In the initiation of G. M. Leasing do you recall opening a bank account for G. M. Leasing? A. Yes. I believe we opened it over at Zions.

Q. And you were one of the signators on that bank account, were you not? A. Yes.

* * *

[108] JAMES M. LIVSEY

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. State your name, please. A. James M. Livsey.

Q. Your address, Mr. Livsey. A. 3657 South 2400 East, Salt Lake City.

Q. By whom are you employed? A. The Internal Revenue Service.

Q. How long have you been employed by the Internal Revenue Service? A. Thirty-three years.

Q. In what capacity do you presently serve? A. Revenue Officer.

Q. And how long have you been a revenue officer? A. Since 1942.

Q. What are the duties of a revenue officer? A. Collection of delinquent accounts. That is basically, primarily, the job.

Q. Were you assigned collection of the account of George I. Norman, Jr.? A. Yes.

Q. When were you first made aware of the fact that you would [109] be assigned that account? A. On Monday, March 19, 1973, I was returning to the office about four o'clock, and Mr. Jensen, chief of the collection division, met me in the hall and asked me to be available tomorrow morning, that he would like Revenue Officer Clesse Hilton and myself to handle a jeopardy assessment.

Q. I see. Did you take any other action that night? A. No.

Q. What was the next action you took? A. The next morning, on March 20, Bert Applegate, the group

supervisor, and myself and John Haacke went to Joell Jensen' office, the chief of the collection division, and at that office we were given the jeopardy assessments and instructed to go out to the residence of George I. Norman and Frances Norman to collect the tax.

Q. Did you in fact go out to the Norman residence? A. Yes. John Haacke and myself, Clark Holfeltz and Ron Harrington, special agent went out to the residence of George I. Norman and Mrs. Norman.

* * *

[110] Q. (By Mr. Andolina) Did you read the forms to Mrs. Norman? A. Yes. I knocked on the door, and Mrs. Norman came to the door. And I had a form 3552, which is what we call an assembly for assessment, and on the form it gives the taxpayer's name and the type of tax, the period, and the amount due, and I read the form to Mrs. Norman on the tax due on Mrs. Norman and then I read the form to Mrs. Norman [111] on the tax due on Mr. Norman.

Q. Did you make a demand on Mrs. Norman for payment of the tax? A. Yes, for payment of the taxes.

Q. Did she pay the taxes? A. No.

Q. What did she advise you? A. She stated to contact her attorney, Shirley Jones.

Q. What action did you take? A. We left the premises and went down to 39th South and Highland Drive, and I made a call to Joell Jensen, chief of the collections division, and he stated that—

MR. LEEDY: Objection. This calls for a conversation which is hearsay, your Honor.

THE COURT: Yes.

MR. ANDOLINA: He may testify he called.

THE COURT: He has already done that. That is about all he can say.

Q. (By Mr. Andolina) After you made the phone call to Mr. Jensen, what action did you take? A. Then we went to the State Capitol and checked the motor vehicle files to see what cars were in the name of George Norman, Jr.

* * *

[112] Q. Do you know if notices of federal tax liens were in fact filed? A. Yes.

* * *

Q. Mr. Livsey, I am handing you Defendants' Exhibits 5 through 9, notices of federal tax liens. Is that your signature? A. Yes.

MR. ANDOLINA: At this point I would offer into evidence Government's Exhibits 5 through 9, notices of federal tax liens.

MR. LEEDY: Your Honor, we would object to those with the exception of 8 and 9. I think 5, 6, and 7 deal [113] with different corporations and different people; 8 and 9 deal with Frances Norman and George Norman.

MR. ANDOLINA: Your Honor, the purpose again—8 and 9 do have Frances and George Norman; 5, 6, and 7 have Real Estate, Inc., as alter ego, nominee, agent, or transferee. This is all part of the same collection, and we would like to show that these corporations were alter egos and all the taxes arose from Mr. Norman's liability.

MR. LEEDY: If it please the Court, I hope we are not going to start trying three other corporations in this lawsuit, and their determination of whether they were alter egos is irrelevant.

MR. ANDOLINA: Your Honor, we are not attempting to show that these other corporations were alter ego or responsible for anybody else's taxation.

THE COURT: Well, we are trying one case here. I don't think we ought to drag in three others. The objection is sustained.

MR. ANDOLINA: I understand 8 and 9 are allowed.

THE COURT: Eight and nine are admitted.

(The documents marked Defendants' Exhibits D-8 and D-9 for identification were received in evidence.)

MR. ANDOLINA: Thank you, sir.

Q. (By Mr. Andolina) What was the next action you took on the collection of the George I. Norman, Jr., account, Mr. [114] Livsey? A. As I recall, the next action was to place levies with the Zions First National Bank.

* * *

[115] Q. Why was the Jaguar not seized immediately? A. At the time of the first seizure the office decided to let Mrs. Norman and her family have cars for transportation, and they left with them three cars.

* * *

[116] Q. When you took the Jaguar—when you seized the Jaguar, were there any other cars available for the family use? A. Well, I understood that—

MR. LEEDY: I object to what he understood.

THE COURT: Sustained.

Q. (By Mr. Andolina) To the best of your knowledge were there any other cars— .

[117] THE COURT: Well, to your knowledge. Do you know? Do you have any knowledge on it?

Q. (By Mr. Andolina) Do you know if there were any other cars available? A. Yes, a station wagon and a Chevrolet car.

Q. How many drivers were in the family? A. As far as I know, two.

Q. Two drivers, and you left two cars there? A. Yes.

* * *

[119] KEITH FINLEY

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. State your name, please. A. Keith Finley.

Q. Your address? A. 8382 Fayeway Drive.

Q. By whom are you employed, Mr. Finley? A. Internal Revenue Service.

[120] Q. How long? A. Six and a half years.

Q. In what capacity do you presently serve? A. I am a revenue officer.

Q. How long have you been a revenue officer? A. Six and a half years.

Q. Were you one of the revenue officers assigned the account of George I. Norman, Jr.? A. No, I wasn't really assigned the account. I assisted on it.

Q. Pursuant to such assistance did you participate in the seizure of the property while in the zeizure of the premises located at what is commonly referred to as the cottage? A. Yes, I did.

Q. What date was that? A. That would have been March 22.

Q. Did you execute a notice of levy pursuant to that seizure. A. Yes, I did.

Q. Mr. Finley, I am showing you a notice of levy which has been marked as Defendants' Exhibit D-10. Will you verify that as your signature. A. Yes, that is my signature.

MR. ANDOLINA: Your Honor, at this time I would offer into evidence the notice of levy dated March 22, 1973, signed by Keith Finley.

[121] MR. LEEDY: No objection, your Honor.

THE COURT: Received.

(The document marked Defendants' Exhibit D-10 for identification was received in evidence.)

Q. (By Mr. Andolina) Did you take this notice of levy with you? A. Yes, I did.

Q. Did you show it to anybody upon reaching the premises? A. When I reached the premises, there was nobody there, so at that point I didn't show it to anybody.

Q. Did you subsequently show it or read it to anybody? A. Later on in the day—to the best of my knowledge it was the same day—Shirley Jones came down to the premise and I showed it to him.

Q. What was your purpose in going to the premises of the cottage? A. To seize assets.

Q. What particular type of assets? A. Any assets at all that could have belonged to George Norman.

Q. Who makes a determination, when you go on a seizure, what constitutes an asset? A. Well, anything of value.

Q. Did you take the books and records that were at the premises? A. Yes, sir.

[122] Q. For what reason did you do that? A. Well, we didn't know what all was among them, if there was—what was of value that could have been mixed in with them, and we didn't have any idea, so we had them sealed in boxes.

Q. Were you given specific instructions to do this? A. Yes, I was.

* * *

[129] JOHN C. GREEN

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. State your name, please. A. John C. Green.

Q. Your address, Mr. Green? A. 2822 South 2750 East, Salt Lake City.

Q. Are you employed, Mr. Green? A. Yes.

Q. By whom? A. The Internal Revenue Service.

[130] Q. In what capacity do you serve? A. I am special procedures officers for the Salt Lake District Office.

Q. What is the function of the special procedures officer? A. My job is to act as liaison between District Office and the Office of the Regional Counsel, the U. S. Attorney, the Department of Justice, the courts.

* * *

Q. Did you recommend that jeopardy assessment be made against George I. Norman, Jr.? A. Yes, I did.

* * *

[131] Q. (By Mr. Andolina) Once the assessment was made against Mr. Norman what action did you take, Mr. Green? [132] A. Once the accounts had been assigned to a revenue officer I advised that revenue officer and the group supervisor as to specific wording on the federal tax liens to be filed and any other pertinent information or help that I could give them.

Q. Did you investigate the assets of George I. Norman, Jr.? A. Not directly.

Q. Were you aware of any assets in the name of George I. Norman, Jr.? A. I was not.

Q. When did you first become aware that the cottage was a place of business and not a residence? A. On March

21 a Mr. Haacke and a Mr. White called my office stating that they had information relative to the fact that there was a business at the address in Holladay and asked my opinion as to whether, under the federal tax liens and the levy authority that they had, should they go ahead and make that seizure of that property.

Q. And you authorized the seizure?

MR. LEEDY: Objection, your Honor. That calls for not only a conclusion of law, but is complete hearsay.

MR. ANDOLINA: Responding to the question?

MR. LEEDY: Yes. What was his advice?

MR. ANDOLINA: What his advice was, your Honor, is not necessarily the right advice. I am just asking to [133] show the steps–

THE COURT: Sustained. Start in a different way.

Q. (By Mr. Andolina) Upon receipt of this information what action did you take? A. I advised the group manager–

MR. LEEDY: I object, your Honor. Again we are getting into hearsay. There is no foundation.

THE COURT: Sustained.

Q. (By Mr. Andolina) Were you aware of the seizure that took place at the business known as the cottage? A. I was aware of that procedure.

Q. Did you know that a second seizure was made? A. Yes, I was aware of that.

Q. Do you know why the second seizure was made? A. Initially it was questionable whether or not that was a business or a personal residence, and the Internal Revenue Service withdrew until a more affirmative determination could be made relative to whether or not it was in fact a business. When it was determined through subsequent investigation that it was a business–

MR. LEEDY: I object to what was determined unless there is a foundation.

MR. ANDOLINA: That is sufficient. Thank you.

Q. (By Mr. Andolina) Mr. Green, in your capacity as special procedures officer you are also familiar with the assessment [134] procedure, is that correct? A. Yes.

Q. I am showing you a copy of a United States individual income tax return for 1970, which has previously been marked as Defendants' Exhibit D-4 and which has been admitted in evidence. Referring to that will you explain to the court why the 289-thousand-dollar check that accompanied it was not reflected on Mr. Clayton's jeopardy assessment. A. This was not–this would not have been accepted by the Service Center as a valid return. The money was reflected, or placed, in a suspense account up at the Service Center, which is reflected on records in the District Office, which I had access to and reviewed and therefore there was–at the time Mr. Clayton made the assessment there would have been no basis upon which he could make application of these funds to those accounts that he was setting up a deficiency on.

* * *

[136] Q. (By Mr. Andolina) Mr. Green, are you familiar with the form known as 4340? A. Yes, I am.

[137] Q. I hand you a copy of a certificate of assessments and payments, which has been marked for identification as Defendants' Exhibit D-11. Would you identify that document, please. A. That is a form 4340, Certificate of Assessments and Payments, on the account of George I. and Frances M. Norman.

MR. ANDOLINA: At this time I would like to offer in evidence Defendants' Exhibit D-11.

THE COURT: Don't hand anything up here. Get around on the other side of the bench.

MR. LEEDY: Your Honor, the plaintiff would object to the introduction of Exhibit D-11 on the grounds there

appear to be certain assessments in there—if it is being introduced for the purpose of showing in any way what tax is owed, we would object, because there is no foundation.

MR. ANDOLINA: Your Honor, the legal sufficiency of this document is only to the fact that the assessment was made, that the officer certifies that according to their records an assessment was made on a certain date in the amount that it was made. This is the certification. The legal sufficiency of this, of course, can be rebutted. This is not conclusive evidence that it is correct.

MR. LEEDY: If it please the Court, I believe it is already in evidence that an assessment was made which failed to reflect the 290-thousand-dollar payment, business [138] deductions, and various other things.

THE COURT: What document is that?

MR. LEEDY: There was no document, but there was testimony.

MR. ANDOLINA: I don't think that testimony has ever been substantiated. We have asked for substantiation.

THE COURT: Whose testimony was it?

MR. LEEDY: Phil Clayton, a defendant.

THE COURT: That is your witness.

MR. ANDOLINA: Yes.

THE COURT: What do you mean?

MR. ANDOLINA: Your Honor, we have asked for substantiation from the accountant of the plaintiff taxpayer. What we are saying is that Mr. Clayton made an assessment on the information he had before him. If you come in and show where we are wrong and give us substantiation, then we will agree that we are wrong. With what we have now we have no choice.

THE COURT: Are you offering a document that is going to entitle the plaintiff to the relief he asks? Is that what you are saying?

MR. ANDOLINA: No, it isn't what I am saying at all, your Honor. I am saying that this document shows that on a certain date, as alleged in the Government's counterclaim, an assessment was made for the amount that we have [139] alleged.

Now, as I understand the law, this document provides our basis for recovery. Then the plaintiff in this case, taxpayer, must come back and show that it is arbitrary by a preponderance of the evidence. That is the sole effect of this document, your Honor.

THE COURT: Mr. Leedy.

MR. LEEDY: No. 1, if it is not offered to prove the amount of tax owing, the objection is somewhat diminished otherwise it is cumulative, because that evidence is already in. It shows prior years and history which are not relevant at all. But we will stipulate that Mr. Clayton prepared an assessment that came out and didn't reflect the payments that had been made, it didn't reflect the basis in the stock, and gave Mr. Norman a thousand dollars business deduction, or the standard deduction, rather than the extreme amount of business expenses which Mr. Clayton admitted he had incurred.

THE COURT: Is that satisfactory to you?

MR. ANDOLINA: Yes, your Honor, it is.

THE COUURT: All right. That stipulation is received, and the document is refused.

* * *

[140] PHILIP JAMES CLAYTON

called as a witness on behalf of the defendants, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. Mr. Clayton, you have previously stated you are a revenue agent, is that correct? [141] A. Yes.

Q. When were you first assigned the account of George I. Norman, Jr.? A. October 17, 1972.

Q. In what manner were you assigned? A. Through our regular channels of control over returns I received a 1247 card that I had control over the return—that a return had not in fact been filed.

Q. What action did you take? A. I took no action at that time.

Q. What was the first action you did take? A. When I found out that Mr. Norman was a fugitive and that no returns had been filed for '70 and '71, I proceeded to investigate the possibility of any income that he might have had.

Q. Where did you get your sources? A. My source of income came from various third-party sources in regard to stock sales.

Q. Did you receive any information from the taxpayer or his accountant or representative? A. No, I did not.

Q. What was the result of your investigation?

MR. LEEDY: I object, your Honor. There is no proper foundation. He indicated he contacted third parties. They are not present in court. I have no idea what they [142] said, to whom, or how they are valid.

MR. ANDOLINA: Your Honor, at the time that Mr. Clayton received a request to investigate he had no person he could go to. Usually when you make an

investigation, you can go to a taxpayer and say, "Let me look at your books and records," go to your accountant, go to your lawyer. He had nothing. He had to do it on his own.

MR. LEEDY: They seized the books and records.

MR. ANDOLINA: We seized the books and records on March 21. I am going to bring out the assessment was made prior to that time.

Q. (By Mr. Andolina) What date, Mr. Clayton, did you make your recommendation of a jeopardy assessment? A. Monday, March 19, 1973, I believe.

THE COURT: When were the documents seized?

MR. ANDOLINA: The 21st, your Honor, and 23rd. The first one was the 21st. The second time was the 23rd.

Q. (By Mr. Andolina) Did you use any documents that were seized in preparing your recommendation for jeopardy? A. No, sir, I did not.

Q. Why did you recommend that a jeopardy assessment be made? A. Because returns had not been filed, and from the amount of stock sales I had knowledge of it was indicated there would be a substantial amount of tax possibly owing.

Q. Mr. Clayton, would you explain the nature of the sources [143] of income that you assessed against Mr. Norman, the deductions, if any, and any controversy you feel has now, subsequent to your assessment, been brought into the case. A. Yes, sir.

MR. LEEDY: I would like one question at a time. Source of income would be one.

Q. (By Mr. Andolina) May we have the source of income that you based your recommendation upon principally. A. Yes, sir. It was based strictly on stock sales which had been made through various brokerage houses.

* * *

DEPOSITION OF BERT APPLEGATE

[1] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

G.M. LEASING CORPORATION, Plaintiff, vs. UNITED STATES OF AMERICA, DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE, RONALD V. WISE, District Director, JAMES M. LIVSEY, JOHN W. HAACK, GLEN S. HILTON and JOHN DOES I THROUGH V, Defendants.	))))))))))	CASE NO. C-189-73 DEPOSITION OF: BERT APPLEGATE

Deposition of BERT APPLEGATE, called as a witness on behalf of the plaintiff in the above-entitled action now pending before the Court, taken at the Law Offices of Bottum and Leedy, 820 Newhouse Building, Salt Lake City, Utah, on September 19, 1973, commencing at the hour of 9:15 o'clock a.m., before L. Reid Seely, Notary Public and Certified Shorthand Reporter, pursuant to Written Notice, and pursuant to the Federal Rules of Civil Procedure.

APPEARANCES

FOR THE PLAINTIFF:	BOTTUM AND LEEDY By RICHARD J. LEEDY, ESQUIRE Salt Lake City, Utah
FOR THE DEFENDANTS:	MICHAEL B. ANDOLINA, ESQUIRE General Litigation Section Tax Division U.S. Department of Justice Washington, D.C. 20530

[2] MR. LEEDY: Would you swear the witness, please?

BERT APPLEGATE

called as a witness on behalf of the plaintiff herein, being first duly sworn, was examined and testified as follows:

MR. LEEDY: May it be stipulated that this is the time and place for taking of the deposition of – off the record.

(Discussion off the record.)

MR. LEEDY: – the Defendant Bert Applegate, in the case of G.M. Leasing Corporation versus United States of America, et al?

Are you going to say you stipulate?

MR. ADOLINA: It's stipulated.

MR. LEEDY: Okay.

DIRECT-EXAMINATION

BY MR. LEEDY:

Q. State your name, please. A. Bert Applegate.

Q. And your address? A. 2138 East 6200 South, Salt Lake City.

Q. Are you employed, Mr. Applegate? A. Yes.

[3] Q. By whom? A. Internal Revenue Service.

Q. And in what capacity? A. Group Manager is my title.

Q. And what group do you manage? A. The D-2 Revenue Officer Group in the Salt Lake City District.

Q. And what is their function? A. To secure deliquent returns, to collect delinquent taxes, and to perform miscellaneous investigations.

Q. Are you acquainted with John Green. A. Yes, I am.

Q. What is his capacity? A. He is a Special Procedures Officer.

MR. LEEDY: Off the Record.

(Discussion off the record.)

Q. (By Mr. Leedy) Are you acquainted with the tax assessment against George I. Norman, Jr. for the years 1970 and 1975? A. Yes, I am.

Q. And when did you first become acquainted with it? A. I believe March 20th was the first date that I actually saw the tax assessments.

Q. And who showed them to you? A. The Chief of Collections, Joel Jensen.

[4] Q. And who was present? A. Myself, Mr. Jensen, and Revenue Officer Jim Livsey.

Q. Tell me what was said by whom at that time. A. As I remember, Mr. Jensen – going back a little bit, he had indicated a couple of days prior to this actual meeting that we were contemplating a jeopary tax assessment. So on the 20th he actually called us over to the office and showed us the assessments, and indicated that we should

take thes, that I should assign them to a revenue officer for normal collection activity. Exactly what was said at that point, I don't know. I think we asked a few questions regarding the taxpayer, and background information, and a few odds and ends like that. But there was not a great deal really said at that meeting.

Q. Are you familiar with a determination made that the plaintiff in this action, G.M. Leasing Corporation, was the alter ego, nominee or transferee of George I. Norman, Jr.? A. Am I acquainted with what, did you say?

Q. With a determination that was made that G.M. Leasing was the alter ego, nominee or transferee of George I. Norman, Jr.? A. Yes, I Am.

Q. When was that determination made? A. I don't know exactly when it was made, but it would have been made shortly after the tax assessment. Probably [5] around the 21st, probably the day after the tax assessment was made.

Q. Who made that determination? A. The determination was made – well, let's say this: The determination was made to seize the cars – I guess this is what you are getting at – so we must have assumed that these were in fact Mr. Norman's cars, through an alter ego. But this was made probably on the date of the 21st, at a meeting about, oh, I would say 8:30, in my office.

Q. And who was present? A. As I remember, there was Phil Clayton, a revenue agent, myself, Jim Livsey, John Green, Special Procedures Officer, Tim Ellison, special agent, and I believe Kles Hilton, a revenue officer. There may have been more people present than that, I don't know.

Q. Can you tell me what was said, and by whom, that led to the determination that G.M. Leasing Corporation was the alter ego, nominee or transferee of George I. Norman, Jr.? A. It was a very lengthy meeting, and I'll

kinda have to just summarize it, not being able to remember exactly what was said. But we had discussed serving the notices of assessment to the taxpayer by Mr. Livsey, what had taken place, and we discussed the case in general.

Q. When you say you discussed what had taken place, what did you discuss? [6] A. What happened when Mr. Livsey went out there and demanded payment. Of course, after that point, it was – we knew this prior to that meeting. But, anyway, it was discussed that a lien had been filed at the County Recorder, after payment was not secured.

Q. A lien had been filed against whom and by whom? A. By Mr. Livsey, I presume. But I'm not exactly sure if it was just the first lien, which was against George and Frances Norman, or if it was the alter ego liens. But I would presume that it would be the liens against George I. Norman and Mrs. Norman.

Q. Okay. A. So we discussed the merits of the case. And we had done quite a lot of preliminary investigation at that time. We had looked at things like how were the cars registered with the State of Utah –

Q. Excuse me. If I may interrupt. When you say you discussed the merits of the case, you mean the merits of determining whether G.M. Leasing Corporation was the alter ego, nominee or transferee of George I. Norman, Jr.? A. Yes. Not only G.M. Leasing, but several other corporations.

Q. You didn't discuss the merits of the tax assessment, itself? A. No.

[7] Q. Okay. I just wanted to set that straight. Now, continue on. A. So I guess we're talking about the determination to seize the cars, or that this G.M. Leasing is an alter ego of George I. Norman.

Do you want to know the factors –

Q. Yes. A. – that we discovered or talked about in making this determination?

Q. That's exactly what I want to know. A. Okay. The first thing I guess – and going strictly from memory, just some of the things I can think of – we looked at the registration records at the State of Utah for vehicles. There were no vehicles registered in George I. Norman or his wife's name. There were vehicles registered in G.M. Leasing, and also I believe Commercial Properties.

So it seemed – on this thing alone, it seemed strange to us that a person would not have any vehicles registered in his personal name. That's just not, you know, the normal situation.

We looked at a report that I believe Tim Ellison, or an affidavit that he had secured from LaVar Wood, which indicated certain things about the corporation.

Q. Are you sure you looked at this prior to this meeting? [8] A. No.

Q. Are you sure this affidavit was secured after the determination; A. Well, I don't know when Mr. Ellison secured that.

Q. Are you positive that it was brought up at the meeting? A. I'm not positive, but it seems to me like it was. Again, this is going back six months.

We talked to the – well, let's get down to the specifics as to what we looked at.

Q. If I may interrupt you. Do you have that affidavit of LaVar Wood? A. Not with me, no.

MR. LEEDY: Would you supply that to me?

MR. ADOLINA: I will produce it for you.

A. We talked to Mr. Larrabee – I didn't talk to him, but the revenue officers had talked to Mr. Larrabee about these cars. Now, I'm not sure exactly when this took

place. Again, I'm going by memory, so what actually took place might be a little bit out of order here. But we did know that the cars were parked in Norman's residence, so this appeared to be personal use of the cars.

We looked in the phone book, there was no general G.M. Leasing in the phone book. We went over – again, I'm saying "we." I didn't actually do this, but people who were [9] at this meeting had done this. We went to the County records and the City records to check for a business license, which is normal procedure for a business to have a license to do business, such as a leasing company would have. There was no record of G.M. Leasing having a business franchise or a County franchise license.

We talked about the types of automobiles that were owned, or at least under the name of Commercial Properties and G.M. Leasing. They were high-priced automobiles, they were show cars, they were collector cars, none of the cars being of the type that would normally be used in a leasing business. This was an important part of our determination.

We talked to the special agent who was there, Phil Clayton, about the corporations. Based on his prior experience with Mr. Norman's records, what was his opinion of these corporations? Were they valid corporations, in his opinion, or were they merely alter egos or fronts, if you want to call them that, of Mr. Norman?

MR. ADOLINA: Excuse Me, Mr. Applegate. You said "Phil Clayton, special agent."

THE WITNESS: He is –

MR. ADOLINA: You mean the revenue agent?

THE WITNESS: Revenue agent, yes.

MR. ADOLINA: Let the record reflect that Phil Clayton is a revenue agent.

[10] THE WITNESS: Okay.

A. This is a general idea of what was discussed at the time. There are other factors, that I can't recall right now, which led us to believe that the cars – well, let's see. Two other things I can think of, perhaps. We did go to the Secretary of State, checked out what was on record there in not only G.M. Leasing but other corporations. We found a closest relationship between several of the corporations. If you want me to name the corporations, I could. For example, Real Estate, Inc., Intermountain Land Development, which wasn't on record there. But we found a close relationship of the officers, for example, Norman, LaVar Wood, also Attorney Jones.

This is an indication, from our background, of alter ego corporations. Just again another indication, when corporations are closely held by a small number of people, this indicates that you might have a possibility of an alter ego corporation.

Let's see. There was one other thing we checked out, too.

I can't recall any more details of actual specifics or factors that we considered, but there were others. All pointing to use, in our background and general knowledge of working cases of this type, that in all likelihood, from what evidence we had at the time, that this would be an alter ego [11] corporation, and that the cars probably would be those of Mr. Norman.

Q. (By Mr. Leedy) Based on all of these factors that were discussed, who made the determination to levy and seize upon the cars in the name of G.M. Leasing Corporation? A. I don's know that I can say any one person did. It v as discussed. We did call Regional Counsel and it was discussed with Mr. Richard Brenna. And we told him what evidence we had, what information we

had, and with his concurrence we determined that we should probably go ahead and take what enforcement action we deemed necessary to protect the Government's interests.

Q. Thereafter did the group, of which you were the group supervisor, seize the automobiles which belonged to G.M. Leasing Corporation – excuse me – which were registered in the name of G.M. Leasing Corporation? A. I don't understand your question. What –

Q. Did the IRS seize the cars which were registered in the name of G.M. Leasing? A. On the 21st, I believe four cars were seized. And I'm not sure if these were all in the name of G.M. Leasing, but I believe that they were.

Q. Subsequently, all of the cars were seized; is that correct? A. That is correct.

[12] Q. Now, were those seizures made by persons under your group, or in your group? A. No, they were not.

Q. Do you know the names of the persons who seized the automobiles? A. I know the name of some of the people. John Haacke, revenue officer, Joe White, revenue officer. I'm not sure who else was actually involved in seizing the vehicles, but there were several people involved.

MR. LEEDY: Can you find that out for me by noon, and we can get this amended complaint then.

MR. ANDOLINA: Yes. Just seizing of the cars, now?

MR. LEEDY: Yes. Because we've lost all those seizure notices.

MR. ANDOLINA: Do we have any of those in the file, bert?

THE WITNESS: We have all the seizure notices.

MR. ANDOLINA: Can we produce them? A. The seizure notice is signed by a revenue officer.

Q. (By Mr. Leedy) Right. A. But it might not be all of the people. In other words, there might be two or three people assisting, and only one person would sign the notice of levy, you see. But I can sure find out, yes, who was involved for you.

MR. ANDOLINA: Okay. They'd appreciate it.

[13] THE WITNESS: Uh huh.

Q. (By Mr. Leedy) At sometine was a determination made to raid the premises at 4751-4752 Holladay Boulevard? A. There was never any plan to raid any residence.

Q. That isn't a residence, for your information. A. Okay. There was never any plan to raid any house or property of the taxpayers.

Q. Well, in fact, a raid occurred; is that correc? A. No, a raid did not occur.

Q. Oh. Tell me what occurred at 4751-4752 Holladay Boulevard. A. This, I believe, is the cottage and building owned by Real Estate, Incorporated.

Q. That's correct. A. At least this is how it's shown at the County Recorder.

On the 22nd, which was the day after the assessment took place, it was discovered through various investigative sources that one, possibly two high-priced cars were located at this residence. I believe it was a blue Stutz automobile, Blackhawk automobile. So two revenue officers went there to investigate it. And I believe it was Mr. Haacke and Mr. White, again.

So they called in to me and indicated that, yes – as I remember, again – there was a car, possibly two cars – [14] I can't remember if there was one or two cars there, but there were cars or car stored there. They wanted to know what they should do.

So at that point I indicated that – they also indicated that there appeared to be an office building

there, and from what investigation they had done that this was possibly the offices of Mr. Norman, where he transacted his business; there had known to be an employee there, who had worked there, and they just told me a little bit about what was located there. They wanted to know what they should do. So at that point I said I would come out and take a look at it.

So myself and Kles Hilton went out there to meet them. and I'm not sure that they actually called the special agents, but at least the special agents somehow found out about it. I may have called them for assistance. We all went out there and met at the scene of the Holladay Boulevard business.

Q. Okay. How many persons were there at that time? A. When I got there, there were several people there. And one thing that may have made it look like a raid, when in fact it was not, was the fact that there were maybe six or seven IRS people there, but there were several other people there who were not associated with the Internal Revenue Service.

Q. Wo were they, and how did they happen to be there? [15] A. Well, I think there were one or two people there from the service station located right by the business. We had inquired there and found out as to the business before going over there. There was the son of Mr. Norman there, George Norman, III. There was Mr. Redd – R-e-d-d, I believe – who was a contractor with Mr. Norman, he was there. There appeared to me a couple, three neighbors also there. I don't know if they were neighbors, but there were two or three people that I had never seen before there. There was myself and three revenue officers there; two being there, one going out with me. There was two or three special agents who arrived there shortly after – I believe they arrived shortly

after we got there. So I would guess maybe six to seven IRS people, maybe six to seven non-IRS people, some of whom I do not know who they were.

Q. Tell me what occurred upon your arrival at the scene. A. Yes. The revenue officers were looking at the Stutz car in the garage, so we went into the garage and started to look at it. And about that time George Norman, III came up. Also Mr. Redd was there. We asked Mr. Redd several questions about the place: what type of a place was it, was it offices, was it a residence, what was its purpose, who used it?

Q. Before we go into that – [16] A. All right.

Q. – do you know how entry was made into the garage? A. Yes. I believe that – well, I'm not sure about this, but I think the revenue officers had the lock cut off the garage.

Q. Now, go on. Apparently we are right now to a point where somebody is talking to Mr. Redd. A. Okay. But you might be interested in this.I'm not sure if there's a window there, or not, so they could see that there was a car. I don't know this. But they had determined that there was this car in there, so I believe that they cut the lock off. In fact, Mr. Norman was, George Norman, III was excited about the removal of his lock. We talked to Mr. Redd and found out a lot of information about the premises.

Q. What information did you find from Mr. Redd? A. We asked him what the place was used for. He indicated it was the offices, or the place where Mr. Norman had offices, sometimes had an employee, and that's where he was, and carried out much of his business.

Q. Okay. Then what happened? A. Then George Norman, III became very upset about us proceeding to seize – the determination had been made to seize the car, the Stutz. He became very upset.

Q. What did he say? [17] A. He says, "You guys can't do this." He says, "Why are you doing it?" et cetera, et cetera, et cetera. I don't remember his exact words, but he was very upset.

Q. Do you recall who responded, and what they said? A. I did. I talked to him. I asked him why not.

He says, "Well, this is not Mr. Norman's car, it has nothing to do with the Normans." He says, "I believe, in fact, it's G.M. Leasing's car."

I asked him he he could find the registration so we could see how it was registered. I don't remember if it had license plates or not on it. He entered the car and looked through it, could not find a registration.

At that point it was determined that we should not then seize the car, not knowing for sure how it was registered. I asked George Norman, III if he would provide me with information about the car, how it was registered, so we could make a determination as to whether we should go ahead with the seizure or not. He said that he would provide me this information.

At that point, as I remember, there was some milling around, and talking, and then we left.

Q. Now, was there a time when entry was made into the cottage? A. Yes, there was.

Q. Was that on the same occasion? [18] A. Yes, there was.

Q. Okay. Tell me about that. A. Okay. As we arrived on the scene, Kles Hilton and myself, there was two locksmiths there. I presume that they had also assisted in opening up the lock to the garage. The back door was open.

Q. Do you know who called the locksmiths? A. I presume it would be John Haacke or Joe White.

When I got there, I walked into the house and the locksmith was changing the lock.

Q. Now, you indicated the back door was open. Do you know whether or not the locksmith opened it, or whether it was left open? A. The locksmith had opened the back door to the cottage.

Q. And, to your understanding, this was done at the direction of the Internal Revenue Service, I guess? A. I presume that it would be done at the direction of probably Mr. Haacke or Mr. Joe White of the Internal Revenue Service.

Q. Okay. A. When I walked in, I looked around, asked them what was happening, what was going on. They said that they were in the process of seizing the building and the car. So I asked around a little bit, looked around. And I was a little [19] bit reluctant, to tell you the truth, at that point as to whether we should seize the house. The outward appearance of the house was such that it could be, from looking at it, a personal residence. Of course, we do not seize personal residences, at least by forced entry. So I was concerned. There was a kitchen, which looked to me like it could be a kitchen like was found in a residence.

Now, keep in mind, at this point I had not been able to talk to anybody like Mr. Redd, to look through the offices, to see what type of business transacted there, or if it would be a personal residence or not. But I was very concerned. So I says, "You guys, I don't think we'd better proceed with the seizure." I says, "Until we have a chance to check this out entirely, I think we'd better back off from the seizure."

So at that point we closed the door and did leave the cottage. We had not touched anything in the cottage, nothing was inspected, nothing was taken. I don't think we were in the cottage more than a matter of a very, three or four minutes at the most.

So the cottage door was locked, and that was the extent of the entry on that day, which I believe was the 21st.

Q. You indicated the locks were changed; is that correct? A. They were in the process. They had just opened the [20] door. And it's our policy to change the locks, so they were in the process of changing the back door lock. When I instructed them we were not going to make the seizure, they changed the locks back to their normal locking, original locks,

Q. Thereafter, after your leaving the premises, I assume that another decision was made to seize the cottage. A. Yes. This was one or two days later. I believe it was two days later that the cottage was actually seized.

Q. When was this determination made? A. A lot took place in the next two days, before the actual cottage was seized. I believe the cottage was seized on the 23rd, which was a Friday. Again, meetings were held each morning with the Internal Revenue Service people, and the case was discussed as to what had taken place, what we'd found out, who we'd talked to. And so I would suppose that probably either Thursday or Friday morning – the exact time I'm not sure of – the determination was made to seize the cottage.

Q. Who was present when the determination was made? A. I would presume that the same people were present that were there on the first meeting.

Q. Would you name them for me please? A. I think myself, John, or Jim Livsey, Kles Hilton, John Green, Revenue Agent Phil Clayton, Special Agent Ron [21] Harrington, Special Agent Tim Ellison, and also Joe White, I think, and John Haacke were also present, revenue officers.

Q. Tell me what was said, and by whom, at that meeting that led to the determination to seize the

cottage. A. Again, the meeting was quite long. Several people spoke. Everybody spoke, in fact, at one time or the other. We discussed what information and investigation we had regarding the case, and factors were discussed as to what's taken place in determining whether we should seize the cottage or not, and we did determine that we should seize the cottage. Again, exactly who said, "Let's seize the cottage," I'm not sure anybody did. But it was discussed with counsel again, and the determination was made to go ahead and seize it.

Q. Was there any discussion and determination made to seize the contents of the cottage? A. Definitely so.

Q. What was said about that? A. Well, going back to the cottage, on the night of the 22nd, I believe it was – maybe it was the 21st. It must have been the 21st. It was the same date that we were originally out to the house. People were observed in different parts of the night going to the cottage, removing boxes of material from the cottage. That was also the same night that the blue Stutz, that we had looked at that same day, was stolen, or at least taken from the cottage and hidden, which we later found.

[22] There was a lot of activity there that night. The lights were on, and a lot of hustle and bustle back and forth. We had no idea what they were taking out of there that night. We did know the next morning that the car was taken. So it was discussed at our meeting about what is there inside the house, were there assets that could be used, to seize and could be used to pay the tax?

So this would be the main purpose of us going there, would be to seize the furnishings. It was presumed and later found that the house was very well furnished with, I would say, above-average-priced furnishings. So we were interested in seizing these furnishings and any other assets that we could find to value to apply to the tax.

Q. Did any discussion occur concerning seizing the books and records that were stored there? A. To my knowledge, there was no specific reason for going there and seizing the books and records.

Q. That was never discussed? A. It may have been discussed. Because we did know that there would be an office space there, and you could assume if there was an office space that there would be several books and records. This may have been discussed. I am not sure. It was, however, discussed after the seizure was started. In fact, immediately upon going there – I know it had been discussed at that point, at the time that the [23] seizure, we actually went in the house. But I also believe it was discussed prior to the actual seizure.

Q. But you can't recall any such discussion. A. I can recall some of the concerns, as to what we should do with the books and records.

Q. Can you recall who said what? A. Yes. In fact, we were concerned about it, and it was discussed with Richard Brennan again, of Regional Counsel.

Q. Who discussed it with him? A. I think probably John Green, Special Procedures Officer, did.

Q. Can you recall what was said? A. Not in detail. But from hearing what was going on, and being involved, there was concern as to whether we should seize the books and records, whether this would later taint our court case, if there was an upcoming court case later. So it was discussed as to what should we do with the books and records if in fact we did seize the building.

MR. ANDOLINA: I want to note an objection to the answer to the question, as based on hearsay, just for the record.

Q. (By Mr. Leedy) Can you recall what Mr. Brennan responded? A. Yes. He instructed us to have the boxes

sealed uped and removed to a safe storage place, which we did.

[24] Q. Was there any discussion concerning a search warrant or a summons? A. No, there was not.

Q. After Mr. Green's discussion with Mr. Brennan, what happened? A. Well, again I'm not sure, exactly, if it was John Green that talked to him or exactly who did talk to him. It could even have been myself, in another discussion with him concerning the records. But we proceeded to go out to the residence and make the seizure.

Q. And how many persons went out at that time? A. Again, I believe there was one or two special agents. It's our policy to, on seizures, if we expect any trouble whatsoever, to send along a special agent for protection. Again, I'm not sure who was there in the way of a special agent, or even if there was a special agent, but I do know that I assigned two revenue officers to make the seizure.

Q. To backtrack a little bit, is that the only reason there was a special agent along, to protect the officers? A. I do not know. I had not requested three or four special agents. But this was a very large case, we did expect possible trouble, based upon our confrontation with George Norman, III. We also heard that Fred Norman, the brother of the taxpayer, was in town; there had, prior to this time, been several strange things happening, like missing [25] stocks and bonds, and shuffling of records, bank account cleaned out, safety deposit boxes, cars being stolen. This, a lot of it was happening. We expected possibly anything to happen. So it would be normal policy for us to send along a special agent for protection, and to keep the peace, if you wanted to word it that way.

Q. To your knowledge, was there a fraud investigation going on at the same time as your proceedures? A. I had heard, prior to even receiving the tax assessments, that

there was – special agents involved on the case. This came about because of a taxpayer delinquency investigation that I had assigned to a revenue officer concerning unfiled income tax returns of Mr. Norman. And at that point, some days or weeks or months before – I'm not sure exactly when – I was aware that there was interest in the case by the Intelligence Division.

Q. How many officers, IRS employees, arrived at the cottage on that particular day? A. The date that the actual seizure was made?

Q. Yes. A. I was not there, so I couldn't say. But there must have been at least four, plus the moving and storage people.

Q. You were not at the cottage at the time the seizure was made? A. No, I was not.

[26] Q. Have you been informed as to what occurred at that time? A. Yes, I was informed of that.

Q. By whom were you informed? A. By the revenue officers.

Q. And who was that? A. Keith Finley, and I believe Clark Holfeltz.

Q. Were they there? A. Yess, I believe they were there.

MR. LEEDY: Off the Record.

(Discussion off the record)

Q. (By Mr. Leedy) What did these officers report to you occurred? A. that they had to wait quite a while for the storage men to get there. The storage men came, they immediated to inventory everything that was there, and they did take a complete inventory of all the furnishings, numbered everything. They also had the storage men box up all the books and records, number the boxes, and remove all of the furnishings and records. But a complete inventory was taken.

A. I assume that the locks were broken into at this time, too. A. It is our policy, when we seize something like a building or a house, to have the locks changed for security purposes.

[27] Q. And that was done. A. Yes, it was.

A. Are you aware of a determination that was made to open the boxes of books and records that were seized from the cottage? A. This, to my knowledge, now – I was not involved in any of this – occurred some weeks later. Is it not true? And I was not in on the determination, did not attend the opening of the boxes and records, so I had nothing to do with it; other than hearsay again as to, yes, that this was going to take place.

Q. Who told you about it? A. I don't Know.

Q. Do you recall what was said? A. No. Again just, you know how the grapevine works.

Q. Are you aware of a determination made to photostate all the books and records; A. I'm aware that this was determined, and I think did take place. But I was not present, and am not aware of the determination being made or by who.

MR. LEEDY: I have noghing further.

CROSS-EXAMINATION

BY MR. ADOLINA:

Q. Mr. Applegate, is it normal, in attempting to effect collection of a delinquent tax account, to seize books [28] and records of the taxpayer? A. Yes, it is. It is not a normal situation generally. In other words, what we're looking for is the collection of the tax. If we feel like books and records will be helpful, or give rise to assets, it is normal for us to seize these. For example, accounts receivable, stock records, books of stocks and bonds, that might lead us to things like this, bank deposits, bank statements, these are very useful in determining and

finding assets. And it is normal procedure, if we suspect that they will be beneficial, for us to seize books and records, yes.

Q. So the basis for seizing the books and records in most cases is that there may be some assets which either are in the books and records or can be found from the books and records; is that correct? A. It is a very good source for determining where to find assets, yes.

MR. ADOLINA: Nothing further.

REDIRECT-EXAMINATION

BY MR. LEEDY:

Q. That leads me to a question: If you were going to seal the books and records, and if your only purpose for seizing them would to be examine them to find assets, in this case you were going to seal them, why would you seize them. A. The seizure wasn't made specifically for the purpose [29] of seizing the books and records. It was – we didn't know what was in that house. There had been a lot of activity the night before, several things removed. So we were very anxious to get there and secure the property, make an examination for assets, whether they be furnishings, equipment or a safe. We had heard that there was an under-floor safe there, with large amounts of assets in it, which we never did find. But it wasn't the specific purpose to go there to seize the books and records, to look for assets, although this was a possible alternative, which was not used at that time because at the instruction of Mr. Brennan we should seal them up.

Q. You lead me to wonder why were they seized at all, if they were going to be sealed up? A. Well, the house has been broken into once. An unattended house, with open windows – several times we've been called there because of open windows – the security is very poor, it

just isn't a good idea to leave voluminous books and records which may be valuable to us, may be valuable to the taxpayer, in an open, unattended and unguarded building. So the best thing to do would be to box them up, number them, and put them in the vault at Redman Moving and Storage, which was done.

Q. Didn't you place a guard on the building, for a watch? [30] A. No. We did hire Deseret Detective Agency to routinely patrol it, we notified the Sheriff. But as far as an actual guard goes, no. No guard was there, although it was watched rather closely by us for the next few days.

Q. Is your answer then, that you seized the books and records to preserve them? A. Again, this was at the instruction as to what to do with the books and records by Mr. Brennan, our counsel. So I don't think that that would be the correct answer, that you mentioned. Although it was his instruction, and it seemed to be the best thing to do at the time.

Q. Then are you telling me that the reason you seized the books and records, and sealed them, is that Brennan told you, and for no other reason? A. No. We would be very interested, as I mentioned before, in going through books and records to find assets.

Q. But, of course, you don't do that in this case, because Brennan told you not to; right? A. That's correct.

Q. Now, go back to the original question. What was the reason for seizing the books and records? A. Well, of course, we'd already seized the building and premises at the time. I'm not sure when we discussed what to do with the books and records, if it was before the seizure or at the time of the seizure, with Mr. Brennan. But [31] I guess, the way you worded the question, that was not the

purpose of seizing them, was to preserve them. But that's what ended up, we did preserve them. Does that help?

Q. The original idea was to hunt for assets. But then after Brennan told you, that your idea changed just to preserve them? A. I think maybe that would be correct, yes.

MR. LEEDY: I have nothing further.

MR. ANDOLINA: No further questions.

(Whereupon the deposition terminated.)

[Defendant's Exhibit 2]

UTAH

DEPARTMENT OF EMPLOYMENT SECURITY

October 18, 1972

G.M. Leasing Corp.
c/o Shirley P. Jones, Jr.
340 East 4th South
Salt Lake City, Utah 84111

Gentlemen:

Status

We have received information from the Secretary of State that your corporation has been authorized to do business in the state of Utah.

We need information with which to determine your status under the provisions of the Utah Employment Security Act. We are enclosing two copies of Form 1, "Status Report." Will you please complete this report covering your activities in Utah and submit one copy to our office within ten days from the date of this letter.

If you have had no activities in Utah and do not expect to pay wages in this state, will you please give us a statement to that effect on Form 1.

Very truly yours,

/s/ Harold P. Clawson
Harold P. Clawson
Asst. Status Supervisor

Form 1 Rev. 7-71

UTAH DEPARTMENT OF EMPLOYMENT SECURITY

1234 South Main Street - Salt Lake City, Utah 84111
P.O. Box 11800

STATUS REPORT

To complete this report properly, please read instructions on reverse side. COMPLETE ALL ITEMS.

1. Type of ownership
☐ a. Individual ☐ b. Partnership ☑ c. Corporation ☐ d. Other (Specify)

2. Name of owner, names of partners, or names of corporate officers
George T Newman Pres. St. Louis Mo. U.S.A. Owns

3. Corporation name, trade name or business name
G M Leasing Corp

4. Mailing address (number and street, city, state and zip code)
340 E 4th South S.L. City Utah

5. Address of establishment or agent's location if different from above

6. Date above owner began operations in Utah
April 27 1972

7. Federal Employer Identification Number

8. ☐ a. Business acquired from another operator ☑ b. New business in Utah - omit Items 9, 10 & 11

9. Name and address of previous operator

10. Did you acquire assets from previous operator? ☐ a. No ☐ b. Yes If yes complete following:
☐ All of previous operator's assets. ☐ ____% of previous operator's assets.

11. Did previous operator continue to operate a business after the transfer?
☐ a. No ☐ b. Yes • enter name and address of business retained

12. Enter below the amount of wages you have paid in Utah during each calendar quarter since you acquired or acquired the business. IF YOU HAVE PAID NO WAGES, ENTER THE WORD "NONE". (See instructions for definition of wages.)

Year	Jan. 1 to Mar. 31	April 1 to June 30	July 1 to Sept. 30	Oct. 1 to Dec. 31
1972		N.	O.	N
1973	None			

13. If you have not paid wages totaling $140.00 or more during any calendar quarter, do you expect to pay that amount in a future quarter? ☐ No ☐ Yes • show quarter ending date 3rd 30 1973
It is your responsibility to notify this Department if you become a "Subject Employer" at a later date.

14. Describe your principal business activity (See instructions)
Leasing Luxury Automobiles, Boats, etc.

15. County in Utah in which your principal activity is located: S.L.

16. Average number of employees: 0

17. I certify that the information contained in this report is true and correct:

Signed Morgan A. Jones Jr. Title Vice Pres. Treas. Date Jan. 23, 1973

Signed _____ Title _____ Date _____

Signed _____ Title _____ Date _____

[Defendant's Exhibit 3]

STATE TAX COMMISSION OF UTAH
STATE OFFICE BUILDING SALT LAKE CITY, UTAH 84114

STATE OF UTAH
SALES AND USE TAX RETURN
FOR STATE AND LOCAL SALES AND USE TAXES

APR.-JUN. 1972
DUE JUL 30, 1972

ACCT. NO. U 63125

NAME AND ADDRESS (PLEASE CORRECT ANY ERROR)
G M LEASING CORP
340 E 4TH SOUTH
S L CITY UT 84111

18 122

IF BUSINESS HAS DISCONTINUED OR HAS BEEN SOLD OR TRANSFERRED, GIVE DATE. IF A CHANGE OF OWNERSHIP, PLEASE ATTACH STATEMENT.

PLEASE READ INSTRUCTIONS ON BACK OF DUPLICATE

	I. SALES TAX — REPORT IN UTAH	II. USE TAX — OUTSIDE UTAH
1. TOTAL SALES	$	
2. DEDUCT EXEMPT SALES (Explain on Schedule A)	$	
3. TAXABLE SALES (Line 1 less Line 2)	$	$
4. ADD 6% Compensating Use Tax from Schedule B, Col. 2		$
5. TOTAL TAX (Line 3 plus Line 4)	$	$
6. CREDIT FOR SALES TAX PAID TO OTHER STATES (Schedule C)	$	$
7. NET TAX (Line 5 less Line 6)	$	$
8. TOTAL STATE TAX (Line 7 plus Line 7 Col. II)	$	
9. LOCAL TAX - SINGLE PLACE OF BUSINESS - 1% OF ____% OF LINE 1	$	$
A. FOR MULTIPLE PLACES OF BUSINESS - COMPLETE SCHEDULE A	$	$
B. FOR UTILITIES, VENDING MACHINES, CONTRACTORS, ETC. - COMPLETE SCHEDULE B	$	$
C. CREDIT FOR CORRECTIONS OF TAX - COMPLETE SCHEDULE C		$
10. TOTAL LOCAL TAX (TOTAL OF LINES 9A, 9B AND 9C)	$	$
11. TOTAL TAX (ON SINGLE LINE IF APPLICABLE)	$	$

PENALTY OF 5% PLUS INTEREST AT 1% PER MONTH IS TO BE PAID FOR EVERY VIOLATION OF THE SALES AND USE TAX LAWS AS SET FORTH IN SECTIONS 59-15-11 AND 59-15-12 UTAH CODE ANNOTATED 1953 AS AMENDED.

12. PENALTY
13. INTEREST
14. TOTAL DUE

I CERTIFY THAT THE INFORMATION CONTAINED IN THIS RETURN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGNED _____ TITLE _____

MAIL THIS RETURN WITH REMITTANCE TO:
STATE TAX COMMISSION OF UTAH

RETURN DUE NOT LATER THAN

BEST COPY AVAILABLE

[Defendant's Exhibit 4]

1040 US Department of the Treasury / Internal Revenue Service
Individual Income Tax Return

Please print or type

George I. and Frances — Norman

2501 Olympus Drive

Salt Lake City, Utah 84117

Filing Status—check only one:
1 ☐ Single 2 ☒ Married filing jointly
3 ☐ Married filing separately and spouse is also filing
4 ☐ Unmarried Head of Household
5 ☐ Surviving widow(er) with dependent child
6 ☐ Married filing separately and spouse is not filing

Exemptions
7 Yourself ☒
8 Spouse ☒
9 First names of your dependent children who lived with you: George III, Ted, Eric, Jonathan
10 Number of other dependents (from line 34)
11 Total exemptions claimed

Please attach Copy B of Form W-2 to back

Income
12 Wages, salaries, tips, etc. (Attach Forms W-2 to back. If unavailable, attach explanation)
13a Dividends ($100 exclusion $) 13b Less exclusion $ Balance ▶ 13c
(Also list in Part II of Schedule B. If gross dividends and other distributions are over $100)
14 Interest. Enter total here (also list in Part II of Schedule B. If total is over $100)
15 Income other than wages, dividends, and interest (from line 40)
16 Total (add lines 12, 13c, 14 and 15)
17 Adjustments to income (such as "sick pay," moving expense, etc. from line 48)
18 Adjusted gross income (subtract line 17 from line 16) Schedule
19 Tax (Check if from Tax Tables 1-12 ☐, Tax Rate Schedule X ☐, Y ☐, Z ☐, or Schedule G ☐)
20 Tax surcharge. See Tax Surcharge Tables A, B and C in instructions. (If you claim retirement income credit, use Schedule R to figure surcharge)
21 Total (add lines 19 and 20)

Tax and Surcharge

Payments and Credits
22 Total credits (from line 55)
23 Income tax (subtract line 22 from line 21). Estimated
24 Other taxes (from line 61)
25 Total (add lines 23 and 24)
26 Total Federal income tax withheld (attach Forms W-2 to back)
27 1973 Estimated tax payments and amount applied from 1972 return
28 Other payments (from line 63)
29 Total (add lines 26, 27, and 28)

Please attach Check or Money Order here

Bal. Due or Refund
30 If line 25 is larger than line 29, enter BALANCE you owe and pay in full with return ▶
31 If line 29 is larger than line 25, enter OVERPAYMENT ▶
32 Line 31 to be: (a) Refunded ▶ (b) Credited to 1974 estimated tax ▶

Sign Here
Your signature
Date

[Defendant's Exhibit 8]

Salt Lake City — 6731-1011

George I. Norman, Jr.

2501 Olympus Drive
Salt Lake City, Utah 84117

1040	7012	3-19-73	292-[illegible]	[illegible]
1040	7112	3-19-73	292-[illegible]	[illegible]

Salt Lake County Recorder
Salt Lake City, Utah

Salt Lake City, Utah

10th March 73

BEST COPY AVAILABLE

[Defendant's Exhibit 9]

Salt Lake City 5701-1036

Frances M. Norman

5011 Cypress Drive
Salt Lake City, Utah 84117

1040	7712	3-19-73	251-10-9425	109,205.00
1040	7112	3-19-73	251-10-9425	44,973.50

Salt Lake County Recorder
Salt Lake City, Utah — Total 154,178.50

Salt Lake City, Utah

20th day of March 73

[Defendant's Exhibit 10]

Form 668-B (Rev. Jan. 1970) — Internal Revenue Service — Levy

Due from: Real Estate, Inc. as Alter Ego, Nominee, Agent, or Transferee of Frances M. Norman

Salt Lake City, Utah

Tax Form Number	Tax Period Ended	Date of Assessment	Identifying Number	Unpaid Balance of Assessment	Statutory Additions	Total
1040	7712	3-19-73	251-10-9425	$	$	$
1040	7112	3-19-73	251-10-9425			

Total Amount Due

There is now due [illegible] from the above taxpayer with respect to the taxes listed above, including penalty and interest provided by law. Demand has been made upon the taxpayer for payment of the amount due, but payment has not been received. Therefore, pursuant to section 6331 of the Internal Revenue Code of 1954, notice is given that all property and rights to property, including any interest in property subsequently acquired by the taxpayer, belonging to the taxpayer and upon which there is a lien for the amount due, are hereby levied upon to satisfy the taxes listed above.

Dated at Salt Lake City, Utah on 27nd day of March

Signature: [signature] — Title: Revenue Officer

BEST COPY AVAILABLE

[Defendant's Exhibit 11]

United States of America

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

Date: January 14, 1974

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I certify that the annexed: is a true Form 4340, Certificate of Assessments and Payments, for George L. & Frances M. Hotman (Jr.), [illegible] Olympus Drive, [illegible] City, Utah, for U.S. Individual Income Tax (1040), for the year 7012, and that I am the keeper and have custody of the records from which the said Certificate of Assessments and Payments was prepared

On file in this office.

IN WITNESS WHEREOF, I have hereunto [illegible] hand, and caused the seal of this office to be affixed on the day and year first above written.

By direction of the Secretary of the Treasury

John C. Hammond

[illegible]

BEST COPY AVAILABLE

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

NAME OF TAXPAYER: George L. & Frances M. Hotman (Jr.)

ADDRESS: 2401 Olympus Drive, Salt Lake City, Utah

SSN: 22-22-1521

PERIOD ENDING: 7012

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	DLN OR ACCOUNT NO (e)	DUE DATE (f)	BALANCE (g)
	Extension of			87277-121-10210-71		
6-11-71	Time for Filing Granted to 6-15-71					
	Extension of			87277-177-17020-71		
7-19-71	Time for Filing Granted to 8-15-71					
	Extension of			87277-121-10021-71		
7-19-71	Time for Filing Granted to 8-15-71					
	Extension of			87277-225-10020-71		
8-31-71	Time for Filing Granted to 10-15-71					
	Amended			87211-525-90000-71		
11-15-71	Return Filed	.00				
	Payment with Amended Return		229,000.00			
	Filed	280,000.00				
	Delinquent			87051-078-10000-73	3-19-73	
	Penalty (Section 6651 a 1 IR Code 1954)	70,000.00			3-19-73	
	Negligence Penalty	14,000.00			3-19-73	

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

NAME OF TAXPAYER: George I. & Frances M. Hansen (Jr.)

ADDRESS: 2201 Olympus Drive [illegible] Salt Lake City, Utah

[illegible]-20-1261

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DLN OR ACCOUNT NO (f)	23C DATE (g)	PERIOD ENDING (h)
							7012 coal.
	(Section 6653(b) IR Code 1954)						
	Interest	42,039.34			87[illegible]1-07[illegible]-[illegible]73 8[illegible]17-116-[illegible]73	3-19-73	
4-16-73	Payment		37.00		8[illegible]17-116-[illegible]73		
4-16-73	Payment		1,058.74		87[illegible]1-[illegible]-[illegible]73		
5-28-73	Abate Interest	(31,447.56)			87217-156-[illegible]73		
6-1-73	Payment		2.00		87217-234-01011-73		
7-18-73	Payment		5,030.57		[illegible]-234-01010-73		
7-18-73	Payment		568.97		87217-211-[illegible]73		
8-22-73	Payment		2,485.42		87217-240-[illegible]73		
8-29-73	Payment		4,633.24		87217-200-10201-73	10-1-73	
	Audit Deficiency	.00		71,035.84			

100

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

NAME OF TAXPAYER: George I. & Frances M. Hansen (Jr.)

[illegible]-20-1261

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DLN OR ACCOUNT NO (f)	23C DATE (g)	PERIOD ENDING (h)

The foregoing transcript contains a statement of all unidentified or advance payments, if any, made by the above taxpayer for the period stated.

This certification covers District 87.

101

SIGNATURE OF OFFICER: John O. Russell by Lowell J. Higbee, Chief, Accounting Branch

DATE: January 14, 1974

Ogden, Utah

U.S. TREASURY DEPARTMENT INTERNAL REVENUE SERVICE

FORM 4340 9-67

United States of America

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

Date: January 10, [illegible]

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I certify that the annexed is a true copy of assessments, payments, [illegible] as appears on the records of this office relative to the income tax liability for the taxable year ended December 31, 1971 of George I & Frances M Norman (Jr), 2501 Olympus Drive, Salt Lake City, Utah, 233-22-1561, as appears from the records of assessments and [illegible] in my custody.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of this office to be affixed on the day and year first above written.

By direction of the Secretary of the Treasury:

[signature]
Commissioner of Internal Revenue

On file in this office

Page 1

CERTIFICATE OF ASSESSMENTS AND PAYMENTS — Income

NAME OF TAXPAYER	ADDRESS	IDENTIFICATION NO.
George I & Frances M Norman (Jr)	2501 Olympus Drive Salt Lake City, Utah	233-22-1561

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DLN OR ACCOUNT NO. (f)	23C DATE (g)	PERIOD ENDING (h)
							7112
4-15-72	Payment		405,125.00		87217-119 70550-72		
	Subsequently Disallowed						
6-19-72	Extension of Time to File				29277-162 70609-72		
	Granted to 6-12-72						
7-6-72	Extension of Time to File				87277-169 10735-72		
	Granted to 8-15-72						
7-24-72	Dishonored Check	405,125.00			87287-131 40000-72		
	Dishonored Check Penalty	4,051.25				7-24-72	
	(Section 6657 IR Code 1954)						
8-30-72	Extension of Time to File				87277-232 10071-72		
	Granted to 10-15-72						
	Return Filed	397,353.94			87251-078 10001-73	3-19-73	
	Delinquent Penalty	99,338.49				3-19-73	
	(Section 6651 a 1 IR Code 1954)						

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

NAME OF TAXPAYER	ADDRESS	IDENTIFICATION
George I & Frances M Norman (Jr)	2551 Olympus Drive Salt Lake City, Utah	223-22-1361

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DLN OR ACCOUNT NO. (f)	23C DATE (g)	PERIOD ENDING (h)
							7112 contd
	Negligence Penalty (Section 6653 a IR Code 1954)	19,867.70			37251-078-10091-73	3-19-73	
	Interest	28,759.46				3-19-73	
	Abate						
5-28-73	Interest	(659.14)					
	Audit				37247-220-		
	Deficiency	.00			10250-73	10-1-73	
				548,702.70			

The foregoing transcript contains a statement of all unidentified or advance payments if any made by the above taxpayer for the period stated.

This certification covers District 87.

FOR [illegible] by Bevan J. Higbee, Chief, Accounting Branch

LOCATION: Ogden, Utah

DATE: January 14, 1974

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE FORM 4340 (9-67)

BEST COPY AVAILABLE

[Caption Omitted in Printing]

AMENDED COMPLAINT

Plaintiff alleges:

1. Jurisdiction of this action is invoked pursuant to 28 United States Code 1340; and Rule 41 Federal Rules of Criminal Procedure.

2. Venue in this action is properly laid in the Central Division for the District of Utah as the actions complained of by the plaintiff against the defendants occurred in Salt Lake County, State of Utah.

3. The United States of America is made a defendant in this action as the actions complained of by the individual defendants were as agents and employees of the United States of America and also the United States of America is required to be made a party under 26 U.S.C. Section 7426; the Department of the Treasury and Internal Revenue Service is made a party to this action as the individual defendants are more directly agents and employees of the Department of the Treasury, Internal Revenue Service; Roland V. Wise, District Director, is made a defendant in this action as he has direct supervision over the individual revenue officers about whose actions the plaintiff complains and also Roland V. Wise as District Director made certain decisions and instructions about which plaintiff complains; James Livsey, Glenn S. Hilton and John W. Haacke and John Doe I through V are individual revenue officers, employed by the United States of America, Department of the Treasury, Internal Revenue Service who committed certain acts, searches and seizures all in violation of the rights of the plaintiff.

4. Plaintiff is a Utah corporation, incorporated for the purpose of leasing certain automobiles; having separate

corporate existence; having four shareholders; and doing business in Salt Lake County, State of Utah.

5. An individual, George I. Norman, Jr. was president of plaintiff corporation, and had custody of the books and records of said corporation in his office located at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, which premises were and are owned by Real Estate, Inc.; said office was used by plaintiff not only to store their records, but also as offices of operation.

6. That sometime before the 23rd day of March, 1973, the exact date being uncertain to the plaintiff, the defendants Department of Treasury, Internal Revenue Service, and Roland V. Wise, as District Director of said Internal Revenue Service, or some other agent or employee of Roland V. Wise, whose name is unknown to plaintiff, made an assessment for income taxes alleged to be owing by George I. Norman, Jr., and Frances M. Norman, his wife; that said assessment was arbitrary, capricious and without foundation and did not take into consideration facts, circumstances, expenses, and payments all known to the defendants and said assessment was in the sum of $951,409.93 against George I. Norman, Jr., and $154,138.54 against Frances M. Norman.

7. That at some date, the exact time not being known to plaintiff, the defendant Roland V. Wise, as District Director of Internal Revenue Service and as an authorized delegate to the Secretary of the Department of the Treasury or Internal Revenue Service, or some other agent of Roland V. Wise, who was without proper authority, made the arbitrary and capricious determination that the collection of the tax against George I. Norman, Jr., and Francis M. Norman would be jeopardized by delay and then the defendant Roland V. Wise, or an agent of his, not authorized by proper authority or

law made demand, without notice, of the payment of said assessment, and, immediately thereafter, made certain levies and seizures.

8. That sometime, throughout the course of these events, the exact date not being known to the plaintiff, the defendant Roland V. Wise, as District Director of the Internal Revenue Service, or his agents who were not authorized by law, made an arbitrary and capricious determination that the plaintiff G. M. Leasing Corp., was either the alter ego, nominee, or transferee of George I. Norman, Jr.

9. One of the individual defendants, the name not being known to plaintiff, contacted one Shirley P. Jones, Attorney at Law, who was an officer and director of plaintiff G. M. Leasing Corp. and also was an attorney for George I. Norman, Jr., and requested permission or advised that they were about to enter the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, and said Shirley P. Jones advised that permission would not be given and that they had no authority in law to enter such premises and further that if such were done, it would be wholly contrary to law.

10. Thereupon James Livsey, Glenn S. Hilton and John W. Haacke, and defendants John Doe I, John Doe II, John Doe III, John Doe IV, and John Doe V, without authority and law, entered the premises at 4751-4753 Holladay Boulevard, contrary to the provision of the Fourth Amendment to the Federal Constitution and proceeded to search said premises in violation of the rights of privacy of plaintiff and its agent George I. Norman, Jr.

11. In the course of searching said premises, the defendants James Livsey, Glenn S. Hilton, John W. Haacke, John Doe I, John Doe II, John Doe III, John

Doe IV, and John Doe V, without authority and contrary to the provisions of the Fourth Amendment of the Federal Constitution seized the books and records of plaintiff corporation.

12. That the seizure of the books and records and files of plaintiff corporation, according to defendant James Livsey, was for the purpose of levying on assets of George I. Norman, Jr. and Frances M. Norman, and that such was a complete subterfuge as said books and records contained no assets and such seizure was totally unreasonable and unnecessary and this it is impossible for plaintiff corporation to reconstruct said books and records and files taken by defendants, and that plaintiff is fearful that unless said books and records and files are returned forthwith and immediately to plaintiff, that the same will be lost or destroyed and that plaintiff may suffer other losses by its failure to prepare its own tax return for both state and federal and that such loss or destruction or delay will create irreparable harm and damage to plaintiff corporation.

13. Thereafter, the defendants James Livsey, John W. Haacke, Glenn S. Hilton, John Doe I, John Doe II, John Doe III, John Doe IV, and John Doe V, made certain levies and seizures upon properties owned by the plaintiff, said property being in the form of automobiles; to-wit: one 1972 Stutz automobile, Serial No. 276571A72863, was seized from the premises of 4753 Holladay Boulevard, Salt Lake City, Utah; one Stutz automobile, Serial No. 276571A172678, was seized from the premises at 2147 East 4800 South, Salt Lake City, Utah; one Rolls Royce Phantom V limousine, Serial No. 5LUA59, was seized at 2300 East 4500 South, Salt Lake City, Utah; one 1930 Rolls Royce Phantom I, Serial No. 21649 was seized from said same premises; one 1971

four-door Stutz Salon, Serial No. 276579P364856 and one 1971 Stutz, Serial No. 276571A155699 was seized from the Century Plaza Parking Lot, Los Angeles County, California; and one Jaguar, Serial No. UC1L67176 BW was seized at 2501 Olympus Dirve, Salt Lake City, Utah.

14. That said levies and seizures of plaintiff's property were without authority of law and in violation of the Fourth Amendment of the Federal Constitution and deprived plaintiff of its property without due process of law in violation of the Fifth Amendment of the Federal Constitution.

15. That since the seizure of said automobiles the plaintiff corporation is unable to carry on its business which may result in substantial loss of revenue and income to said corporation.

16. Plaintiff corporation is not the alter ego, nominee, or transferee of either George I. Norman, or Frances M. Norman.

17. The defendants should be required to forthwith immediately account for all items seized from the premises at 4751-4753 Holladay Boulevard.

18. On or about May 30, 1973, the defendants admitting the illegiality of their actions returned boxes of books and records which they indicated were all of the books and records taken from the premises at 4751-4753 Holladay Boulevard.

19. At the time of the return of the boxes containing books and records, the defendant John Doe I, stated to plaintiff's agent, an attorney Walter Ellett, that the defendants had indeed searched through those books and records prior to returning them to plaintiff and had made photostats of said books and records.

20. That by virtue of the illegal actions of the defendants and to prevent said defendants from reaping the

fruit of their illegal actions, not only should the photostats of the books and records be suppressed from the defendants, but they should be forever barred from using any such photostats of books and records illegally obtained in any proceeding of any kind and should be further barred from reacquiring the same by any means.

21. Plaintiff is entitled to an order of this Court releasing the levies and seizures upon the automobiles illegally obtained by defendants and requiring the defendants to return said automobiles to plaintiff and for an order of this Court preventing and barring the defendants from ever reacquiring said automobiles.

22. That in addition to the loss caused by the seizure of the records and seizure of the automobiles, the plaintiff has sustained loss by virtue of the defendants releasing two of said automobiles to a lienholder of said automobiles without notice to plaintiff and said lienholder selling said automobiles at far below their market value.

23. Plaintiff is entitled to a judgment against the individual defendants for the damages, in an amount not yet determined, caused by their illegal action which violated the constitutional rights of the plaintiff.

WHEREFORE, plaintiff prays judgment against the defendants as follows:

1. That the Court issue its immediate order to show cause requiring the defendants to appear on a day certain and to show cause, if any they have, why the photostats of the books, papers, records, files and documents of plaintiff corporation should not be returned to plaintiff, or destroyed, said photostats being from the books, papers, records, files and documents seized from the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah.

2. For the Court to issue its immediate Order to Show Cause requiring the defendants to appear on a day certain and to show cause, if any they may have, why the automobiles which were levied upon and seized by the defendants should not be returned forthwith, to the plaintiff.

3. For an Order of the Court determining that plaintiff corporation is not the alter ego, nominee, or transferee of either George I. Norman, Jr., or Frances M. Norman, his wife.

4. For an Order suppressing all evidence the defendants obtained from said books, records, files and documents seized and removed from the premises at 4751-4753 Holladay Boulevard, and for an order forever barring the defendants from ever again obtaining such evidence by any means; including an order requiring either the destruction or return of the photostats taken from the books, records, files and documents seized and removed from the premises at 4751-4753 Holladay Boulevard.

5. For an Order of the Court suppressing as evidence the seizure of the automobiles alleged in plaintiff's complaint and for a further order barring forever the defendants from ever again obtaining a seizure of said automobiles.

6. For an Order of the Court releasing all levies filed by the defendants against the property of the plaintiff.

7. For a Judgment against the individual defendants in an amount yet to be determined to compensate for the loss suffered by plaintiff for the invasion of its constitutional rights by the defendants.

8. For such furhter and other relief in law and equity as the Court may deem reasonable and proper.

DATED this 5th day of June, 1973.

BOTTUM & LEEDY

By /s/ Richard J. Leedy
Richard J. Leedy

STATE OF UTAH
COUNTY OF SALT LAKE

FRED PAUL NORMAN, being first duly sworn upon oath deposes and says that he is the president of G.M. Leasing Corp., and makes this certification for and on behalf of said G.M. Leasing Corp., the plaintiff herein; that he has read the above and foregoing Complaint and knows and understands the contents thereof and that the same is true as to his own knowledge except as to those matters herein stated upon information and belief and as to those matters, he believes the same to be true.

SUBSCRIBED and SWORN to before me this 5th day of June, 1973.

/s/ R. J. Leedy
Notary Public
Residing at Salt Lake City, Utah

My commission expires:
[Illegible]

[Caption Omitted in Printing]

COMPLAINT IN INTERVENTION

Plaintiff alleges:

1. Jurisdiction of this action is invoked pursuant to 28 United States Code 1340; 26 United States Code 7426; and Rule 41 Federal Rules of Criminal Procedure.

2. Venue in this action is properly laid in the Central Division for the District of Utah as the actions complained of by the plaintiff against the defendants occurred in Salt Lake County, State of Utah.

3. The United States of America is made a defendant in this action as the actions complained of by the individual defendants were as agents and employees of the United States of America and also the United States of America is required to be made a party under 26 U.S.C. Section 7426; the Department of the Treasury and Internal Revenue Service is made a party to this action as the individual defendants are more directly agents and employees of the Department of the Treasury, Internal Revenue Service; Roland V. Wise, District Director, is made a defendant in this action as he has direct supervision over the individual revenue officers about whose actions the plaintiff complains and also Roland V. Wise as District Director made certain decisions and instructions about which plaintiff complains; the individual defendant Glenn Hilton is a revenue officer employed by the United States of America, Department of the Treasury, Internal Revenue Service, who committed certain acts, searches and seizures all in violation of the rights of Intervenor.

4. Intervenor is a resident of Salt Lake County, State of Utah, and is the owner of certain securities which are the subject matter of this action.

5. That sometime before the 23rd day of March, 1973, the exact date being uncertain to the plaintiff, the defendants Department of Treasury, Internal Revenue Service, and Roland V. Wise, as District Director of said Internal Revenue Service, or some other agent or employee of Roland V. Wise, whose name is unknown to plaintiff, made an assessment for income taxes alleged to be owing by George I. Norman, Jr., and Frances M. Norman, his wife; that said assessment was arbitrarry, capricious and without foundation and did not take into consideration facts, circumstances, expenses, and payments all known to the defendants and said assessment was in the sum of $951,409.93 against George I. Norman, Jr., and $154,138.54 against Frances M. Norman.

6. That at some date, the exact time not being known to plaintiff, the defendant Roland V. Wise, as District Director of Internal Revenue Service and as an authorized delegate to the Secretary of the Department of the Treasury or Internal Revenue Service, or some other agent of Roland V. Wise, who was without proper authority, made the arbitrary and capricous determination that the collection of the tax against George I. Norman, Jr., and Frances M. Norman would be jeopardized by delay and then the defendant Roland V. Wise, or an agent of his, not authorized by proper authority or law made demand, without notice, of the payment of said assessment, and, immediately thereafter, made certain levies and seizures.

7. That sometime, on or before June 7, 1973, the exact date not being known to the Intervenor, the defendant Roland V. Wise, as District Director of Internal Revenue Service or his agents who are not authorized by law, made an arbitrary and capricious determination that Intervenor, George I. Norman, III, was either the alter ego, nominee, or transferee of George I. Norman, Jr.

8. That Intervenor acquired certain shares of common stock in Emdeco International Inc. in return for cancellation of a debt owed to him for services performed.

9. That on the 5th day of June, 1973, Intervenor presented his certificate of common stock in Emdeco International, Inc. to the transfer agency Atlas Transfer, who was agent for Emdeco and requested transfer of the 7,143 shares into his name.

10. That on June 7, 1973, the defendant Glenn S. Hilton seized said certificate from Atlas Transfer and now refuses to return the same on the pretext that Intervenor is a nominee, alter ego, or transferee of George I. Norman, Jr., and that George I. Norman, Jr., owes a

substantial tax liability and that the further pretext that said tax liability and payment thereof is in jeopardy.

11. The seizure of said certificate was in violation of the Fourth and Fifth Amendments to the Federal Constitution in that it deprived Intervenor of his property without due process of law and constituted an unreasonable seizure.

12. That your Intervenor's father has disappeared leaving his family without a regular source of income and the defendants have levied and seized assets belonging to your Intervenor's father and his mother and consequently, Intervenor is without funds with which to pay living expenses and was desirous of using said stock seized by the defendants for the purpose of paying regular living expenses and also his tuition to college and that without an immediate hearing requiring the release of said stock, your Intervenor is unable to pay his regular living expenses and will be unable to attend college.

13. Your Intervenor is not the alter ego, transferee, or nominee of George I. Norman, Jr.

14. Intervenor is entitled to an order of this court releasing any levy and seizure of his Emdeco International stock and an order requiring the defendants to return said stock to him and for an order preventing and barring the defendants from ever, in the future, seizing or reacquiring said stock.

15. Intervenor is entitled to a judgment against the individual defendant, Glenn S. Hilton, in an amount not yet determined, caused by his illegal action which violated the constitutional rights of Intervenor.

WHEREFORE, Intervenor prays judgment against the defendants as follows:

1. That the Court issue its immediate order to show cause requiring the defendants to appear on a day certain

to show cause, if any they have, why the liens, levies and seizures placed on his Emdeco International stock should not be removed and released and that said stock be returned to Intervenor and that the defendants be forever barred, enjoined and prevented from ever levying and seizing upon said stock or other assets of the Intervenor.

2. For an order of the Court determining that Intervenor is not the alter ego, nominee, or transferee of George I. Norman, Jr.

3. For a Judgment against the individual defendant, Glenn S. Hilton, and Roland V. Wise, in an amount not yet determined, to compensate for the loss suffered by Intervenor for the invasion of his constitutional rights.

4. For such other and further relief that the Court deems just and proper.

DATED this 8th day of June, 1973.

BOTTUM & LEEDY

By /s/Richard J. Leedy
Richard J. Leedy
10 Exchange Place, Suite 820
Salt Lake City, Utah 84111

STATE OF UTAH
COUNTY OF SALT LAKE : ss.

GEORGE I. NORMAN, III, being first duly sworn upon oath deposes and says that he is the Intervenor herein and makes this certification; that he has read the above and foregoing Complaint and knows and understands the contents thereof and that the same is true as to his own knowledge except as to those matters herein stated upon information and belief and as to those matters, he believes the same to be true.

by /s/ George I. Norman, III
George I. Norman, III

SUBSCRIBED and SWORN to before me this 8th day of June, 1973.

Notary Public
Residing at Salt Lake City, Utah

My Commission expires:
September 18, 1976

[Certificate of Mailing Omitted in Printing]

[Caption Omitted in Printing]

SECOND AMENDED COMPLAINT

Plaintiff alleges:

1. Jurisdiction of this action is invoked pursuant to 28 United States Code 1340; 26 United States Code 7426; and Rule 41 Federal Rules of Criminal Procedure.

2. Venue in this action is properly laid in the Central Division for the District of Utah as the actions complained of by the plaintiff against the defendants occurred in Salt Lake County, State of Utah.

3. The United States of America is made a defendant in this action as the actions complained of by the individual defendants were as agents and employees of the United States of America and also the United States of America is required to be made a party under 26 U.S.C. Section 7426; the Department of the Treasury and Internal Revenue Service is made a party to this action as the individual defendants are more directly agents and employees of the Department of the Treasury, Internal

Revenue Service; Roland V. Wise, District Director, is made a defendant in this action as he has direct supervision over the individual revenue officers about whose actions as he the defendant complains and also Roland V. Wise as District Director made certain decisions and instructions about which plaintiff complains; James Livsey, Glenn S. Hilton, John W. Haacke, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Philip J. Clayton are individual revenue officers and agents, employed by the United States of America, Department of the Treasury, Internal Revenue Service who committed certain acts, searches and seizures all in violation of the rights of the plaintiff.

4. Plaintiff is a Utah corporation, incorporated for the purpose of leasing certain automobiles; having separate corporate existence; having four shareholders; and doing business in Salt Lake County, State of Utah.

5. An individual, George I. Norman, Jr. was managing agent of plaintiff corporation, and had custody of the books and records of said corporation in his office located at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, which premises were and are owned by Real Estate, Inc., said office was used by plaintiff not only to store their records, but also as offices of operation.

6. That sometime before the 23rd day of March, 1973, the exact date being uncertain to the plaintiff, the defendants Department of Treasury, Internal Revenue Service, and Roland V. Wise, as District Director of said Internal Revenue Service, and defendant Philip J. Clayton made an assessment for income taxes alleged to be owing by George I. Norman, Jr., and Frances M. Norman, his wife; that said assessment was arbitrary, capricious and

without foundation and did not take into consideration facts, circumstances, expenses, and payments all known to the defendants and said assessment was in the sum of $951,409.93 against George I. Norman, Jr., and $154,183.54 against Frances M. Norman.

7. That at some date, the exact time not being known to plaintiff, the defendant Roland V. Wise, as District Director of Internal Revenue Service and as an authorized delegate to the Secretary of the Department of the Treasury of Internal Revenue Service, or some other agent of Roland V. Wise, who was without proper authority, made the arbitrary and capricious determination that the collection of the tax against George I. Norman, Jr., and Frances M. Norman would be jeopardized by delay and then the defendant Roland V. Wise, or an agent of his, not authorized by proper authority or law made demand, without notice, of the payment of said assessment, and, immediately thereafter, made certain levies and seizures.

8. That sometime, throughout the course of these events, the exact date not being known to the plaintiff, the defendant Roland V. Wise, as District Director of the Internal Revenue Service, or his agents who were not authorized by law, made an arbitrary and capricious determination that the plaintiff G.M. Leasing Corp., was either the alter ego, nominee, or transferee of George I. Norman, Jr.

9. One of the individual defendants, the name not being known to plaintiff, contacted one Shirley P. Jones, Attorney at Law, who was an officer and director of plaintiff G.M. Leasing Corp. and also was an attorney for George I. Norman, Jr., and requested permission or advised that they were about to enter the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, and said Shirley P. Jones advised that permission would

not be given and that they had no authority in law to enter such premises and further that if such were done, it would be wholly contrary to law.

10. Thereupon James Livsey, Glenn S. Hilton, John W. Haacke, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Philip J. Clayton, without authority and law, entered the premises at 4751-4753 Holladay Boulevard, contrary to the provision of the Fourth Amendment to the Federal Constitution and proceeded to search said premises in violation of the rights of privacy of plaintiff and its agent George I. Norman, Jr.

11. In the course of searching said premises, the defendants James Livsey, Glenn S. Hilton, John W. Haacke, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Philip J. Clayton, without authority and contrary to the provisions of the Fourth Amendment of the Federal Constitution seized the books and records of plaintiff corporation.

12. That the seizure of the books and records and files of plaintiff corporation, according to the individual defendants, was for the purpose of levying on assets of. George I. Norman, Jr. and Frances M. Norman, and that such representations were a complete subterfuge as said books and records contained no assets and such seizure was totally unreasonable, unnecessary and that such seizure jeopardized plaintiff corporation not only from carrying on its business, but also preparation for its taxes, its tax return, for the payment of its taxes and the taxes of its agent George I. Norman, Jr., and that such seizure has caused irreparable harm and damage to plaintiff corporation.

13. Thereafter, the defendants James M. Livsey, John W. Haacke, Glenn S. Hilton, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Burt C. Applegate, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness, Philip J. Clayton and Simeon Hiller, made certain levies and seizures upon properties owned by the plaintiff, said property being in the form of automobiles; to-wit: one 1972 Stutz automobile, Serial No. 276571A172678, was seized from the premises at 2147 East 4800 South, Salt Lake City, Utah; one Rolls Royce Phantom V Limousine, Serial No. 5LUA59, was seized at 2300 East 4500 South, Salt Lake City, Utah; one 1930 Rolls Royce Phantom, Serial No. 21649 was seized from said same premises; one 1971 four-door Stutz Salon, Serial No. 276579P364856 and one 1971 Stutz, Serial No. 276571A155699 was seized from the Century Plaza Parking, Los Angeles County, California; and one Jaguar, Serial No. UC1L67176 BW was seized at 2501 Olympus Drive, Salt Lake City, Utah.

14. That said levies and seizures of plaintiff's property were without authority of law and in violation of the Fourth Amendment of the Federal Constitution and deprived plaintiff of its property without due process of law in violation of the Fifth Amendment of the Federal Constitution.

15. That since the seizure of said automobiles the plaintiff corporation is unable to carry on its business which may result in substantial loss of revenue and income to said corporation.

16. Plaintiff corporation is not the alter ego, nominee, or transferee of either George I. Norman, or Frances M. Norman.

17. The defendants should be required to forthwith immediately account for all items seized from the premises at 4751-4753 Holladay Boulevard.

18. On or about May 30, 1973, the defendants admitting the illegality of their actions returned boxes of books and records which they indicated were all of the books and records taken from the premises at 4751-4753 Holladay Boulevard.

19. At the time of the return of the boxes containing books and records, an individual defendant Roland V. Wise, stated to plaintiff's agent, an attorney Walter Ellett, that the defendants had indeed searched through those books and records prior to returning them to plaintiff and had made photostats of said books and records.

20. That by virtue of the illegal actions of the defendants and to prevent said defendants from reaping the fruit of their illegal actions, not only should the photostats of the books and records be suppressed from the defendants, but they should be forever barred from using any such photostats of books and records illegally obtained in any proceeding of any kind and should be further barred from reacquiring the same by any means.

21. Plaintiff is entitled to an order of this Court releasing the levies and seizures upon the automobiles illegally obtained by defendants and requiring the defendants to return said automobiles to plaintiff and for an order of this Court preventing and barring the defendants from ever acquiring said automobiles.

22. That in addition to the loss caused by the seizure of the records and seizure of the automobiles, the plaintiff has sustained loss by virtue of the defendants releasing two of said automobiles to a lienholder of said automobiles without notice to plaintiff and said lienholder selling said automobiles at far below their market value.

23. Plaintiff is entitled to a judgment against the individual defendants in the amount of $500,000.00 for

damages caused by their illegal action which was violating the constitutional rights and privileges for which the individual defendants should be penalized in the amount of $25,000.00 each as punitive damages.

WHEREFORE, plaintiff prays judgment against the defendants as follows:

1. That the Court issue its immediate order to show cause requiring the defendants to appear on a day certain and to show cause, if any they have, why the photostats of the books, papers, records, files and documents of plaintiff corporation should not be returned to plaintiff, or destroyed, said photostats being from the books, papers, records, files and documents seized from the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah.

2. For the Court to issue its immediate Order to Show Cause requiring the defendants to appear on a day certain and to show cause, if any they may have, why the automobiles which were levied upon and seized by the defendants should not be returned forthwith, to the plaintiff.

3. For an Order of the Court determining that plaintiff corporation is not the alter ego, nominee, or transferee of either George I. Norman, Jr., or Frances M. Norman, his wife.

4. For an Order suppressing all evidence the defendants obtained from said books, records, files and documents seized and removed from the premises at 4751-4753 Holladay Boulevard, and for an order forever barring the defendants from ever again obtaining such evidence by any means; including an order requiring either the destruction or return of the photostats taken from the books, records, files and documents seized and removed from the premises at 4751-4753 Holladay Boulevard.

5. For an Order of the Court suppressing as evidence the seizure of the automobiles alleged in plaintiff's complaint and for a further order barring forever the defendants from ever again obtaining a seizure of said automobiles.

6. For an Order of the Court releasing all levies filed by the defendants against the property of the plaintiff.

7. For a Judgment against the individual defendants for general damages in the amount of $500,000.00 and for punitive damages in the amount of $25,000.00 to compensate for the loss suffered by plaintiff for the invasion of its constitutional rights by the defendants.

8. For such further and other relief in law and equity as the Court may deem reasonable and proper.

DATED this 11th day of October, 1973.

by /s/ Richard J. Leedy
Richard J. Leedy
Attorney for Plaintiff
10 Exchange Place, Suite 309
Salt Lake City, Utah 84111

[Certificate of Mailing Omitted in Printing]

[Caption Omitted in Printing]

PRE-TRIAL ORDER

Based upon stipulation of counsel the following are to be the issues tried in the above-entitled matter:

1. Was G.M. Leasing Corp., the alter ego, nominee, or transferee George I. Norman, Jr. (it has been stipulated that the defendants have the burden of proof on this issue); in the event the defendants fail to sustain their burden of proof the court should order the return of all

property seized from G.M. Leasing Corporation together with a further Order that the defendants should never again attach, levy, or seize any property belonging to G.M. Leasing Corporation for the tax liabilities of George I. Norman, Jr.

2. Did the search of the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah and the seizure of books and records thereat violate the plaintiff's constitutional rights (if the search and seizure at 4751-4753 Holladay Boulevard, Salt Lake City, Utah violated the plaintiff's constitutional rights the court should order a destruction of all photostats that were made of said books and records by the defendants and that such photostats of the books and records and examinations made thereof, should in no way, ever be used against the plaintiff for any purpose.

3. As a question of law, does this court have jurisdiction to award damages against the individual defendants assuming that it is found that the defendants violated the constitutional rights of the plaintiff.

4. Assuming that, after evidence has been presented, the court finds that the constitutional rights of plaintiff were violated and that the plaintiff is entitled to an award of damages as a result thereof, the issue remains whether or not the conduct of the individual defendants involved was intentional and whether or not the plaintiff is entitled to punitive damages as a result thereof.

5. It is stipulated that all of the individual defendants, with the exception of the individual defendant Roland V. Wise, were involved and took part in the search and seizure in the premises located at 4751-4753 Holladay Boulevard. Assuming the court finds that the plaintiff is entitled to damages, what are the damages that should be awarded as compensation for the loss and injury suffered

by the plaintiff and what damages should be awarded as punitive damages against the defendants.

6. Is the intervenor George I. Norman, III the alter ego, nominee, or transferee of George I. Norman, Jr. (if the court finds that George I. Norman, III is not the alter ego, nominee, or transferee of George I. Norman, Jr., then the court should order the return of the property seized by the defendants from the intervenor to intervenor) it has been stipulated that the defendants have the burden of proof to determine that George I. Norman, III, intervenor, is the alter ego, nominee, or transferee of George I. Norman, Jr.

7. As an issue of law, if the assessment of taxes against George I. Norman, III was arbitrary and the determination to issue a jeopardy assessment was arbitrary and not proper, are the plaintiff and intervenor entitled to relief from such arbitrary assessment or jeopardy assessment.

8. Assuming that the plaintiff and intervenor are entitled to relief, to what relief are they entitled.

9. As an issue of fact was the assessment of taxes against George I. Norman, Jr. arbitrary and was the jeopardy assessment arbitrary and improperly determined and issued.

DATED this 12th day of October, 1973.

BY THE COURT:

WILLIS RITTER
Chief Judge
United States District Court
for the District of Utah

The Parties stipulate to the foregoing Pre-Trial Order.

DATED this 19th day of September, 1973.

/s/ Richard J. Leedy
RICHARD J. LEEDY
Attorney for Plaintiff and
Intervenor

/s/Michael B. Andolina
MICHAEL B. ANDOLINA
Attorney for Defendants

[Caption Omitted in Printing]

ANSWER AND COUNTERCLAIM

Come now the defendants to the above-entitled action, by their attorney, C. Nelson Day, United States Attorney for the District of Utah, and for their answer to plaintiff's Second Amended Complaint, answer and allege as follows:

I

Defendants deny the allegations contained in Paragraph 1 of plaintiff's Second Amended Complaint except admit that this Court has the limited jurisdiction under Section 7426 of the Internal Revenue Code of 1954 (26 U.S.C., Section 7426) to determine the propriety of the seizure by the defendant, United States of America, of the automobiles which are the subject matter of this action.

II

Defendants admit that venue of this action is properly laid in the Central Division of this District.

III

Defendants admit that the sovereign defendant, United States of America, is a proper party to that portion of this action seeking return of automobiles allegedly levied upon wrongfully by said defendant. Defendants specifically deny that the remaining defendants are properly named as defendants in this action.

IV

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of plaintiff's Second Amended Complaint and therefore deny those allegations.

V

Defendants deny the allegations contained in Paragraph 5 of plaintiff's Second Amended Complaint.

VI

Defendants deny the allegations contained in Paragraph 6 of plaintiff's Second Amended Complaint except admit that a delegate of the Secretary of the Treasury of the United States made assessments against the delinquent-taxpayers, George I. Norman, Jr. and Frances M. Norman, for their federal income tax liabilities.

VII

Defendants deny the allegations contained in Paragraph 7 of plaintiff's Second Amended Complaint except admit that the assessments made against the delinquent-taxpayers, George I. and Frances M. Norman, were made under the authority of Section 6861 of the Internal Revenue Code of 1954 providing for jeopardy assess-

ments and that in an effort to effect collection thereof levies were made upon the property of the delinquent-taxpayers.

VIII

Defendants deny the allegations contained in Paragraph 8 of plaintiff's Second Amended Complaint except admit that a determination has been made by a delegate of the Secretary of the Treasury of the United States that the plaintiff corporation is an alter ego of the delinquent-taxpayer, George I. Norman, Jr.

IX

Defendants deny the allegations contained in Paragraph 9 of plaintiff's Second Amended Complaint.

X

Defendants deny the allegations contained in Paragraphs 10 and 11 of plaintiff's Second Amended Complaint except admit that the named defendants entered the premises located at 4751-4753 Holladay Boulevard and did seize the books and records contained therein.

XI

Defendants deny the allegations contained in Paragraph 12 of plaintiff's Second Amended Complaint.

XII

Defendants admit the seizures referred to in Paragraph 13 of plaintiff's Second Amended Complaint but deny that the property seized was that of the plaintiff.

XIII

Defendants deny the allegations contained in Paragraphs 14 through 17 of plaintiff's Second Amended Complaint.

XIV

Defendants admit that the books and records seized from the premises of 4751-4753 Holladay Boulevard were voluntarily returned by the defendants but deny that this action constituted an admission of the illegality of the seizure.

XV

Defendants admit that the books and records seized by them had been photostated prior to their return.

XVI

Defendants deny the allegations contained in Paragraphs 20 through 23 of plaintiff's Second Amended Complaint.

WHEREFORE, the defendants pray as follows:

1. That this court order and adjudge that the plaintiff takes nothing by its complaint and that its cause of action be dismissed.

2. That the defendants have their costs and such other and further relief as to this Court seems just and proper.

In further answer to the plaintiff's Second Amended Complaint, the defendants assert the following:

FIRST AFFIRMATIVE DEFENSE

That the individual defendants as agents and employees of the sovereign, United States of America, are not subject to suit in this action and the present suit may

only be maintained, if at all, against the sovereign, United States of America.

SECOND AFFIRMATIVE DEFENSE

Except as to the issue of the propriety of the seizure of the automobiles which are the subject of this suit, this Court lacks jurisdiction over the sovereign, United States of America, which has not consented to be sued in this action.

Having fully answered the allegations contained in plaintiff's Second Amended Complaint, the counterclaimant, United States of America, complains and alleges as follows:

A. Counterclaimant is seeking to obtain a declaration from this Court that the plaintiff-counterdefendant, G.M. Leasing Corp., is an alter ego of the delinquent-taxpayer, George I. Norman, Jr., and an order that the federal tax liens attaching to the property of the said delinquent-taxpayer, be foreclosed against the property of the plaintiff-counterdefendant, all as is more fully set forth below.

B. This counterclaim has been authorized and requested by the Chief Counsel, Internal Revenue Service, a delegate of the Secretary of the Treasury of the United States, and is brought under the direction of the Attorney General of the United States pursuant to the provisions of Sections 7401 and 7403 of the Internal Revenue Code of 1954.

C. Jurisidction of this counterclaim is conferred upon this Court by Sections 1340 and 1345 of Title 23, United States Code, and Section 7402 of the Internal Revenue Code of 1954, for the reason that this is a civil action arising under the Internal Revenue laws of the United States.

D. On March 19, 1973, a delegate of the Secretary of the Treasury of the United States made assessments against the delinquent-taxpayer, George I. Norman, Jr., for the amounts and periods set forth in the schedule below:

Type of Tax	Taxable Period	Date of Notice and Demand	Amount of Assessment	Unpaid Assessed Balance
Income	1970	3/19/73	$280,000.00(T) 84,000.00(P) 42,099.34(I)	$406,099.37
Income	1971	3/19/73	397,353.94(T) 119,206.19(P) 28,750.46(I)	545,310.59
			TOTAL ASSESSED UNPAID BALANCE	$951,409.93

(T) Tax Assessed.
(P) Penalty assessed pursuant to Sections 6651(a) and 6653(a) of the Internal Revenue Code of 1954.
(I) Interest assessed.

E. Although notices of the assessments described in Paragraph D above were given to the delinquent-taxpayer, George I. Norman, Jr., and demands for payment thereof were made, the outstanding balance of the said assessments has not been satisfied and there remains due and owing to the United States of America from said taxpayer the total amount of $951,409.93, plus interest as provided by law.

F. The unpaid balance due on the assessments described in Paragraph D above is secured by federal tax liens which encumber all property and rights to property of the delinquent-taxpayer, George I. Norman, Jr., on the dates the assessments were made, including any after-

acquired property, and including the assets of the plaintiff-counterdefendant corporation.

G. Based on information and belief the plaintiff-counterdefendant corporation, G.M. Leasing Corp., is a corporation that was formed or caused to be formed by the delinquent taxpayer, George I. Norman, Jr. At all times pertinent hereto, the said delinquent-taxpayer controlled the affairs of the corporation, and had controlled the affairs of said corporation as an instrumentality and tool of said George I. Norman, Jr.

H. Based on information and belief the plaintiff-counterdefendant, G.M. Leasing Corp., is the alter ego of the delinquent-taxpayer, George I. Norman, Jr., and is not a separate corporate entity which is capable of holding title to assets presently in its name.

WHEREFORE, the counterclaimant, United States of America, prays as follows:

1. That this Court find, determine and adjudge that the plaintiff-counterdefendant corporation, G.M. Leasing Corp., is the alter ego of the delinquent-taxpayer, George I. Norman, Jr.; that said corporation was never a separate corporate entity; and that title to all assets, both real and personal, of said corporation, including the automobiles which are the subject matter of this suit, is in the delinquent-taxpayer, George I. Norman, Jr.

2. That this Court find, determine and adjudge that the United States has federal tax liens which attach to all property and rights to property of the delinquent-taxpayer, George I. Norman, Jr., including the assets of the plaintiff-counterdefendant corporation, G.M. Leasing Corp., and including the automobiles which are the subject matter of this action.

3. That this Court order that the federal tax liens attaching to the subject automobiles be foreclosed, that

said automobiles be sold in accordance with the normal procedure of this Court, and that the proceeds of such sale be distributed to the United States towards satisfaction of its liens.

4. That the United States be granted its costs in this action and such other and further relief as to this Court seems just and proper.

/s/C. Nelson Day
C. NELSON DAY
United States Attorney

Copy of the above and foregoing Answer and Counterclaim served on Richard J. Leedy, Attorney for Plaintiff, at 10 Exchange Place, Salt Lake City, Utah, 84111, by mail, this 1st day of November, 1973.

/s/ Mary Brochmeier
Secretary

[Caption Omitted in Printing]

REPLY

COMES NOW the plaintiff and replies to the defendant's counterclaim as folows:

FIRST DEFENSE

(a) Plaintiff denies that defendant is entitled to the relief as shown in paragraph (a) of defendant's counterclaim and therefore denies all of the allegations contained in same paragraph (a).

(b) Plaintiff is without sufficient information to form a belief as to the truth and veracity of the allegations contained in paragraph (b) of defendant's counterclaim and therefore denies the same.

(c) Plaintiff denies the allegations of law and allegations of fact contained in paragraph (c) of defendant's counterclaim.

(d) Defendant is without sufficient information to form a belief as to the truth and veracity of the allegation that a delegate of the Secretary of Treasury of the United States made assessments against George I. Norman, Jr. or that George I. Norman, Jr. was a delinquent taxpayer but the plaintiff admits that a letter outlining an assessment as alleged in paragraph (d) of defendant's counterclaim which was delivered to the former residence of George I. Norman, Jr.

(e) Plaintiff denies allegations contained in paragraph (d) of defendant's counterclaim.

(f) The plaintiff admits that certain leins have been asserted by the defendant and denies all the remaining allegations of paragraph (F) of the defendant's counterclaim.

(g) Plaintiff denies the allegations of paragraph (g) of the defendant's counterclaim.

(h) Plaintiff denies the allegations of paragraph (H) of defendant's coumterclaim.

WHEREFORE plaintiff prays defendant take nothing by way of its counterclaim and that costs be awarded to the plaintiff.

DATED this 8th day of January, 1974.

/s/Richard J. Leedy
Richard J. Leedy
Attorney for Plaintiff
10 Exchange Place, Suite 309
Salt Lake City, Utah 84111
Telephone: 531-1007

[Certificate of Mailing Omitted in Printing]

[Caption Omitted in Printing]

MOTION TO DISMISS

COMES NOW the plaintiff and interveneor, after the defendants have completed their presentation of evidence with regards to the issue of alter ego, nominee, and transferee and respectfully moves the court for judgment in accordance with the prayer of the complaint and on the grounds for the reason the defendants' have not sustained its burden of proof and upon the facts and law the defendants' have shown no right to relief.

DATED this 19th day of February, 1974.

/s/Richard J. Leedy
RICHARD J. LEEDY
Attorney for Plaintiff
10 Exchange Place, Suite 309
Salt Lake City, Utha 84111
Telephone: 531-1007

[Certificate of Mailing Omitted in Printing]

[Caption Omitted in Printing]

FINDINGS OF ACT AND CONCLUSIONS OF LAW

Trial on this matter came on regularly on the 10th day of May, 1974; the plaintiff and intervenor were represented by counsel, Richard J. Leedy, Attorney at Law; the defendants were represented by counsel, Michael B. Andolina, Esq. Durrell Nielsen, Esq., C. Garold Sims, Esq., James M. Dunn, Esq., and C. Nelson Day, U.S. Attorney; the plaintiff and intervenor presented evidence

supporting their claims; and the defendant presented evidence supporting its claim that the plaintiff and intervenor were alter-egos, nominees, or transferees of George I. Norman, Jr. and Frances M. Norman and further evidence to support its counterclaim for foreclosure on the assets of plaintiff and intervenor and, after resting, the plaintiff and intervenor moved for Judgment and Dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure and the court, after reviewing the evidence and the memorandums and responsive memorandums submitted by each party and arguments of counsel and, based thereon, makes the following:

FINDINGS OF FACT

1. Plaintiff is a Utah Corporation.

2. Intervenor is an individual residing in Salt Lake County, Utah.

3. 4751-4753 Holladay Boulevard were the offices of plaintiff G.M. Leasing Corporation and the residence of intervenor, George I. Norman III.

4. On the 23rd day of March, 1973, employees of the Internal Revenue Service forced entry and entered the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, for the purpose of searching for books and records to be used as evidence against George I. Norman, Jr. and Frances M. Norman.

5. On the 25th day of March, 1974, employees of the Internal Revenue Service again forced entry and searched the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, and seized books and records belonging to plaintiff and others to use as evidence against George I. Norman, Jr. and Frances M. Norman.

6. That the employees of the Internal Revenue Service committing said search and seizure were defendants

James M. Livsey, John W. Haacke, Glen S. Hilton, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Burt C. Applegate, Ronald P. Harrington, Tim W. Elison, Lawnie, C. Mayhew, Thomas L. Harkness and Philip J. Clayton.

7. The defendants did not obtain a search warrant for the entry into 4751-4753 Holladay Boulevard for search and seizure of records nor did they obtain or serve a summons for seizing the books and records.

8. That the above named defendants did intentionally commit said forced entry, search and seizure knowing full well that they were violating the rights of G.M. Leasing Corporation, intervenor and others.

9. Two of the individual defendants were employed in the IRS Intelligence Division for conducting criminal investigations.

10. Defendant Philip Clayton maliciously committed said forced entry, and search and seizure.

11. After the commencement of this action, the defendants returned the books and records that had been seized at 4751-4753 Holladay Boulevard but photostated said books and records and now retain said photostats.

12. The defendants levied upon and seized all of the assets of G.M. Leasing Corp. which include, to wit: one Stutz automobile, Serial No. 276571A172678; one 1972 Stutz automobile, Serial No. 276571A172863; one Rolls Royce Phantom V Limousine, Serial No. 5LUA59; one 1930 Rolls Royce Phantom, Serial No. 21649; one 1971 four-door Stutz Salon, Serial No. 276579P364856; one 1971 Stutz, Serial No. 276571A155699; one Jaguar, Serial No. UC1L67176 BW; and a bank account at Zions First National Bank in Salt Lake City, Utah.

13. The defendants disposed of two Statz automobiles; one 1971 four-door Stutz Salon, Serial No.

276579P364856; and one 1971 Stutz, Serial No. 276571A155699; the remaining automobiles owned by G.M. Leasing Corp. are under seizure and being stored by the defendants at 50 West 300 South, Salt Lake City, Utah.

14. The defendants seized Certificate #SL012905 of Emdeko International, Inc. bearing 7,143 shares of its common stock from intervenor.

15. All seizures took place pursuant to a jeopardy assessment for federal income taxes, penalties, and interest allegedly owed by George I. Norman, Jr. and Frances M. Norman for the years 1970 and 1971.

16. The seizures were based on defendants determination that plaintiff and intervenor were alter-egos, nominees, or transferees of George I. Norman, Jr. and Frances M. Norman.

17. The assessment of income taxes failed to take into consideration a $289,800.00 payment by George I. Norman, Jr. and the penalties and interest were also assessed without consideration of the $289,800.00 payment.

18. The assessment included items of income which were not in fact income, including $115,000.00 in alleged income from an alleged sale of securities which was not a sale of securities and was not income.

19. The assessment did not give credit for business expenses incurred by George I. Norman, Jr. and Frances M. Norman, and George I. Norman, Jr. and Frances M. Norman had extraordinarily high business expenses.

20. The assessment of income taxes, penalties, and interest against George I. Norman, Jr. and Frances M. Norman for the years 1970 and 1971 was erroneous.

21. No income or liability for federal income taxes, penalties or interest for George I. Norman, Jr. or Frances M. Norman was proven.

22. George I. Norman, Jr. and Frances M. Norman have no liability for federal income taxes, penalties or interest for the years 1970 and 1971.

23. G.M. Leasing Corp. was formed and incorporated for the legitimate business purpose of leasing automobiles.

24. The assets of G.M. Leasing Corp. were not transferred to it by George I. Norman, Jr. or Frances M. Norman for insufficient consideration.

25. G.M. Leasing Corp. was not undercapitalized at its formation.

26. G.M. Leasing Corp. was not set up for fraudulent purposes or for the purpose to contravene law or contract.

27. G.M. Leasing Corp. had a board of directors and officers.

28. G.M. Leasing Corp. has engaged in substantial business activity in preparation for its business purpose of leasing automobiles.

29. G.M. Leasing Corp. was not solely controlled by George I. Norman, Jr. or Frances M. Norman.

30. G.M. Leasing Corp. was not a transferee of George I. Norman, Jr. or Frances M. Norman.

31. G.M. Leasing Corp. was not an alter-ego of George I. Norman, Jr. or Frances M. Norman.

32. G.M. Leasing Corp. was not a nominee of George I. Norman, Jr. or Frances M. Norman.

33. With respect to 7,000 shares of the 7,143 share certificate of Emdeko International, Inc. common stock seized from intervenor George I. Norman, III, George I. Norman, III, owned 7,000 shares and was not an alter-ego, nominee, or transferee of George I. Norman, Jr. or Frances M. Norman.

34. With respect to 143 shares of Emdeko International, Inc. common stock seized from George I. Norman, III, George I. Norman, III, was acting as alter-ego, nominee, or transferee of George I. Norman, Jr. and Frances M. Norman.

From the above findings of fact, the court makes the following:

CONCLUSIONS OF LAW

1. The defendants James M. Livsey, John W. Haacke, Glen S. Hilton, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Burt C. Applegate, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Philip J. Clayton, committed an illegal search and seizure of the offices of plaintiff and the residence of intervenor in violation of the 4th Amendment to the United States Consitution and plaintiff and intervenor are entitled to Judgment for damages against those defendants for the invasion of their privacy in an amount yet to be determined and the photostats of all illegally seized books and records now in the possession of the defendants should be destroyed and any use of those photostats of books and records would be illegal.

2. Plaintiff and intervenor are entitled to a Judgment for punitive damages from the defendant Philip J. Clayton in an amount yet to be determined.

3. The defendants counterlaim for foreclosure should be dismissed with prejudice.

4. The defendants should be ordered to return all of the seized assets of G.M. Leasing Corp. and intervenor; which are: one 1972 Stutz automobile Serial No. 276571A172678; one 1972 Stutz automobile, Serial No. 276571A172863; one Rolls Royce Phantom V Limousine, Serial No. 5LUA59; one 1930 Rolls Royce

Phantom, Serial No. 21649; one Jaguar, Serial No. UC1L67176 BW; without cost for storage in the same condition as said assets were at the time of said illegal seizure and 7,000 shares of Emdeko International, Inc. stock to intervenor together with 143 shares of Emdeko International, Inc. stock to G. I. Norman, Jr., Frances M. Norman or any other rightful claimant. All levies and liens against said assets should be removed and Judgment against the defendant United States of America in favor of plaintiff should be awarded in an amount yet to be determined for the value of the two automobiles disposed of by defendants.

DATED this 24th day of May, 1974.

BY THE COURT:

/s/Willis W. Ritter
HONORABLE WILLIS W. RITTER

[Caption Omitted in Printing]

JUDGMENT

Trial on this matter came on regularly on the 10th day of May, 1974; the plaintiff and intervenor were represented by counsel, Richard J. Leedy, Attorney at Law; the defendants were represented by counsel, Michael B. Andolina, Esq., Durrell Nielsen, Esq., C. Garold Sims, Esq., James M. Dunn, Esq., and C. Nelson Day, U.S. Attorney; the plaintiff and intervenor presented evidence supporting their claims; and having previously made finding of fact and conclusions of law, and based thereon:

IT IS HEREBY ORDERED that the plaintiff and intervenor have judgment for damages in an amount yet to be determined against the defendants James M. Livsey,

John W. Haacke, Glen S. Hilton, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Burt C. Applegate, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Philip J. Clayton.

IT IS FURTHER ORDERED that the plaintiff and intervenor have Judgment for punitive damages from the defendant Philip J. Clayton in an amount yet to be determined.

IT IS FURTHER ORDERED that all illegally seized books and records now in the possession of the defendants be destroyed and any use of those photostats of books and records is illegal.

IT IS FURTHER ORDERED that the defendants counterclaim for foreclosure is dismissed with prejudice.

IT IS FURTHER ORDERED that the defendants return all of the seized assets of G.M. Leasing Corp. and intervenor; which are: one 1972 Stutz automobile Serial No. 276571A172678; one 1972 Stutz automobile, Serial No. 276571A172863; one Rolls Royce Phantom V Limousine, Serial No. 5LUA59; one 1930 Rolls Royce Phantom, Serial No. 21649; one Jaguar, Serial No. UC1L67176 BW, without cost for storage in the same condition as said assets were at the time of said illegal seizure and 7,000 shares of Emdeko International, Inc. stock to intervenor together with 143 shares of Emdeko International, Inc. stock to G. I. Norman, Jr., Frances M. Norman or any other rightful claimant.

IT IS FURTHER ORDERED that all levies and liens against said assets are removed.

IT IS FURTHER ORDERED that the plaintiff have Judgment in an amount yet to be determined for the value of the two automobiles disposed of by defendants.

DATED that 24th day of May, 1974.

BY THE COURT:

/s/ Willis W. Ritter
HONORABLE WILLIS W. RITTER

[Certificate of Mailing Omitted in Printing]

No. 75-235

In the Supreme Court of the United States

OCTOBER TERM, 1975

G. M. LEASING CORP., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-235

G. M. LEASING CORP., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

In this federal income tax case, petitioners contend that they met their burden of proving that the Internal Revenue Service's assessment was erroneous, that a levy on their property violated their Fourth Amendment rights, and that their corporation was entitled to recognition as a separate taxable entity.

The pertinent facts are as follows: An Internal Revenue Service audit of George I. Norman, Jr., revealed that he failed to file tax returns for the years 1970 and 1971. Norman was a fugitive from justice so that during the course of the audit the agent had to rely on third-party records. The agent's examination

596-839—75——1

demonstrated that Normal owed taxes for 1970 and 1971 (Pet. App. A–2).

On March 19, 1973, jeopardy assessments in the amount of approximately $1.1 million were entered against Norman and his wife (Pet. 6; Pet. App. A–2). The following day, Internal Revenue Service agents went to Norman's residence, where they requested payment from his wife. However, she refused to pay the jeopardy assessments (Pet. App. A–2).

A further investigation by the revenue agents revealed that petitioner G. M. Leasing Corp. was the alter ego of Norman (Pet. App. A–2). Accordingly, on March 21, 1973, the agents went to an office, which had been listed in G. M. Leasing Corp's name, and which formerly had been occupied by Norman. The premises were owned by one of Norman's son, petitioner George I. Norman, III. The agents attempted to levy on the property in that office to satisfy Norman's tax liability (Pet. App. A–3; I–R, 14, 132–133).[1] With the aid of locksmiths, they opened the doors of the building and garage. Shortly thereafter, petitioner George I. Norman, III, arrived and claimed that the automobile in the garage belonged to him. The agents then decided to leave the premises without seizing anything because they were uncertain as to the ownership of the property located in the buildings (Pet. App. A–3).

After consulting with their superiors, the agents returned to the premises on March 23, 1973 (Pet. App.

[1] "I–R," and "II–R." refer to the two-volume record appendix filed in the court of appeals.

A–3; I–R. 31–32). They again used locksmiths to gain entry, and, upon the advice of Internal Revenue Service attorneys, seized the books and records they found and placed them in boxes without inspecting them. The documents were later photocopied and returned to G. M. Leasing Corp. (I–R, 33–34). In addition, the agents seized automobiles and a bank account listed in the name of G. M. Leasing Corp. (Pet. App. A–3).

Petitioners brought this action in the United States District Court for the District of Utah requesting, *inter alia,* the return or destruction of the photocopies of the documents seized, suppression of evidence obtained from the seized documents, and release of all levies (Pet. App. A–3 to A–4). The government counterclaimed for foreclosure of its tax levies on the ground that G. M. Leasing Corp. was the alter ego of George I. Norman, Jr. (Pet. 6; II–R, 71–72). The district court held that the tax assessment was erroneous, that the Service's levies upon the property and documents had been executed improperly, and that G. M. Leasing Corp. was not the alter ego of Norman (Pet. App. A–14 to A–21). Accordingly, the court entered judgment for petitioners and dismissed the government's counterclaim (Pet. App. A–22 to A–24). The court of appeals reversed, holding that at the time of the seizure, the government had a valid existing lien upon all the property involved (Pet. App. A–1 to A–14).

1. The court of appeals correctly held that the tax assessment against Norman was presumptively cor-

BEST COPY AVAILABLE

rect. Thus, petitioner G. M. Leasing Corp., whose property was seized in satisfaction of Norman's tax liability on the ground it was the alter ego of Norman, had the burden of proving that the tax assessment against Norman was erroneous (Pet. App. A–11). See, *e.g., United States* v. *Rexach,* 482 F.2d 10 (C.A. 1), certiorari denied, 414 U.S. 1039; *Bar L Ranch, Inc.* v. *Phinney,* 426 F.2d 995 (C.A. 5); United *States* v. *Lease,* 346 F.2d 696 (C.A. 2).[2]

Petitioners do not dispute these general principles here, but contend (Pet. 10–13) that the court of appeals erred in not holding the entire $1.1 million assessment arbitrary and erroneous on the basis of the government's concession that one $115,000 item in the assessment was erroneous. The settled rule, however, is to the contrary. A taxpayer's demonstration that one item in an assessment is erroneous satisfies his burden only as to that item; the assessment as to each of the additional items must be sustained until each is shown to be erroneous. *Foster* v. *Commissioner,* 391 F.2d 727, 735 (C.A. 4); *Anderson* v. *Commissioner,* 250 F.2d 242, 246 (C.A. 5); *Hoffman* v. *Commissioner,* 298 F.2d 784, 788 (C.A. 3); *Clark* v. *Commissioner,* 266 F.2d 698 (C.A. 9). Although petitioners assert (Pet. 11–12) that those cases involved "separable items," the assessment here was similarly comprised of separate items, such as omissions of income from

[2] *United States* v. *Rindskopf,* 105 U.S. 418, cited by petitioner (Pet 11), is not to the contrary. There, the Court held that a tax assessment was *prima facie* proof of liability but that the taxpayer could contest any material fact upon which it was based.

various stock sales, and numerous unsubstantiated business deductions Pet. App. A–11 to A–12).

Contrary to petitioners' argument (Pet. 12–13), nothing in *Bar L Ranch, Inc.* v. *Phinney, supra,* or *United States* v. *Lease, supra,* conflicts with this item-by-item approach to the burden of proof allocation. *Bar L Ranch* involved only one item—a sale of land in exchange for a promissory note—and therefore cannot be deemed to speak to an assessment involving multiple items. Similarly, *Lease* held that proof of error as to one item satisfies the taxpayer's burden only as to that one item.[3]

2. The court of appeals also correctly held that the Internal Revenue Service agents conducted a valid levy under 26 U.S.C. 6331 and not an illegal search and seizure (Pet. App. A–9 to A–10). The record shows that a jeopardy assessment was entered, that demand for payment was made and that there was a refusal to pay (Pet. App. A–2). Under Section 6331 (b), the taxpayer's refusal to pay allows the United States to collect the tax by levy, which includes the power of "seizure by any means." Thus, the agents were acting pursuant to applicable federal revenue

[3] In *Lease*, the Second Circuit approved a jury charge which stated that if a taxpayer shows that there is an "error with respect to a particular item the presumption of correctness of the computation by the Commissioner and assessment with respect to that item disappears and then the burden shifts to the government to prove whether any deficiency exists and if so in what amount" (346 F.2d at 701). Thus, if a taxpayer shows that a separate item is incorrect, then the Commissioner must introduce rebuttal evidence if he is to avoid judgment for the taxpayer as to that item.

provisions in seizing the taxpayer's property.[4] Moreover, the record clearly demonstrates that the levy was upon the advice of counsel and was executed with great caution and deference to petitioners' rights (I–R, 14, 21–23, 33).

There is no basis for petitioners' contention (Pet. 14–17) that the seizure violated their Fourth Amendment rights. This Court rejected an identical argument more than a century ago in *Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 17 How. 272, 285–286. See also *Phillips* v. *Commissioner*, 283 U.S. 589, 596; *Fuentes* v. *Shevin*, 407 U.S. 67, 97–92 and n. 24, affirming on this issue *Fuentes* v. *Faircloth*, 317 F. Supp. 954, 958 (S.D. Fla.).

3. Finally, the court of appeals correctly concluded that the evidence overwhelmingly showed that G. M. Leasing Corp. was Norman's alter ego. Contrary to petitioners' argument (Pet. 17–18) that the court of appeals incorrectly assumed that they had the burden of proving non-alter ego status, the government stipulated in the district court that it had the burden of proving that G. M. Leasing Corp. was the alter ego of Norman. Thus, the court of appeals fully recognized that the burden of proof was on the government with respect to this issue. However, its conclusion that G. M. Leasing Corp. was the alter ego of Norman

[4] The court of appeals observed that the property seized included books and records only because "[i]t was thought that the documents might be, or could indicate the location of, money and stock certificates" (Pet. App. A–3).

was based on the overwhelming evidence which demonstrated that Norman exerted substantial, if not exclusive, control over the corporation; that Norman dealt with the corporations' assets as if they were his own property; that the directors were mere figureheads; and that, as stated in the testimony of an incorporator-director, the corporation was merely a shell of Norman and had no assets or property of its own (Pet. App. A–6). Moreover, while the corporation was nominally in the automobile leasing business, it never leased any automobiles, had no employees, paid no wages, held no directors' or stockholders' meetings, issued no stock, and paid no sales[5] or use tax (Pet. App. A–7 to A–8; I–R, 71–73, 80–81, 98–100).[6]

[5] On the corporation's sales tax status report filed with the State of Utah two months before the levy, it reported that the business was "inactive to present" (Ex. D–2).

[6] Petitioners also contend (Pet. 18) that since their motion for a directed verdict at the close of the government's case was granted, the court of appeals should not have reversed, but rather should have remanded the case to permit them to offer further evidence. However, the record shows that the district court did not grant petitioners' motion for a directed verdict. Instead, it heard oral argument from each side (I–R, 155–170), asked for legal memoranda (I–R, 168–169), and stated that "in the state of this record this afternoon * * * I am in no position to decide this today" (I–R, 169–170). If petitioners had any additional evidence to offer, they should have sought to do so at that time, since the district court had not granted the motion and indicated that it was going to decide the case on its merits (I–R, 140, 166, 169–170). Moreover, the judgment does not refer to a directed verdict but states that it was based on the evidence presented and the previously made findings of facts and conclusions of law (II–R, 90).

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1975.

U.S. GOVERNMENT PRINTING OFFICE : 1976

Supreme Court, U. S.
FILED
FEB 5 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1975

No. 75-235

G. M. LEASING CORP.,
Petitioners,

v.

UNITED STATES, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE PETITIONERS

RICHARD J. LEEDY
744 East 300 South
Salt Lake City, Utah 84102
Attorneys for Petitioners

TABLE OF CONTENTS

	Page
OPINION BELOW	1
JURISDICTION	1
QUESTION PRESENTED	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
STATEMENT	5
SUMMARY OF ARGUMENT	8
ARGUMENT	9
POINT I. THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PROHIBITS UNREASONABLE SEIZURES CONDUCTED BY AGENTS OF THE UNITED STATES WITH A VIEW TOWARDS CIVIL OR CRIMINAL PROCEEDINGS IN ENFOREMENT OF THE REVENUE LAWS	9
POINT II. IN THE ABSENCE OF EXIGENT CIRCUMSTANCES THE FOURTH AMENDMENT REQUIRES A WARRANT PRIOR TO THE SEIZURE OF PROPERTY OR EVIDENCE BY INTERNAL REVENUE SERVICE AGENTS	27
POINT III. BECAUSE OF THE WRONGFUL SEIZURE ACTION OF THE RESPONDENTS THE TRIAL COURT FOUND LIABILITY FOR DAMAGES AND AWARDED AFFIRMATIVE RELIEF	34
CONCLUSION	38

Page

CITATIONS

Cases

Alexander v. American United, Inc.,
416 U.S. 752 (1974) 36

Allee v. Medrano,
416 U.S. 802 (1973) 37

Bevins v. Six Unknown Named Agents,
403 U.S. 388 (1971) 34, 35, 37

Bob Jones University v. Simon,
416 U.S. 725 (1974) 36

Boyd v. United States, 116 U.S. 616 (1886) 19, 20

Brown v. United States, 411 U.S. 223 (1973) 24

Camara v. Municipal Court of San Francisco,
387 U.S. 523 (1967) 31, 32

Carroll v. United States,
267 U.S. 132 (1925) 28

Chambers v. Maroney, 399 U.S. 42 (1970) 27

Coolidge v. New Hampshire,
403 U.S. 443 (1971) 27, 28, 29, 32

Donaldson v. United States,
400 U.S. 517 (1971) 17, 18

Dyke v. Taylor Implement and Mfg. Inc.,
391 U.S. 216 (1968) 20

Efrian T. Suarez, 58 T.C. 792 (1972) 21

Entick v. Carrington,
19 Howell State Trials 1029 (1765) 14, 19, 32

Frank v. Maryland, 359 U.S. 360 (1959) 32

Fuentes v. Shevin, 407 U.S. 67 (1972) 22, 23

Go-Bart Importing Co. v. United States,
282 U.S. 344 (1931) 26

Page

Gomez v. Layton, 394 F.2d 764 (D.C. Cir. 1968) 37

Gouled v. United States, 225 U.S. 298 (1921) 26

Hale v. Henkel, 201 U.S. 43 (1906) 26

Hill v. Phillpot, 445 F.2d 144 (7th Cir. 1971) 26

Husty v. United States, 282 U.S. 694 (1931) 28

In re Jackson, 96 U.S. 727 (1878) 19

Johnson v. United States, 333 U.S. 10 (1948) 29

Jones v. United States, 362 U.S. 257 (1960) 24

Katz v. United States, 389 U.S. 347 (1967) .. 18, 27, 29

Knoll Associates Inc. v. F.T.C.,
397 F.2d 570 (7th Cir. 1968) 21

Kremen v. United States, 353 U.S. 346 (1957) 26

Laing v United States, ...U.S.....,....
44 L.W. 4035 (1976) 21, 22, 23, 28, 34, 36

Lankford v. Gelston, 364 F.2d 197 (4th Cir. 1966) .. 37

Mancusi v. DeForte, 392 U.S. 364 (1968) 24

Mapp v. Ohio, 367 U.S. 643 (1961) 20

Mathis v. United States, 391 U.S. 1 (1968) 21

Mitchell v. W. T. Grant Co.,
416 U.S. 600, 610-611 (1974) 22

Murray v. Hoboken Land Co.,
18 Howard 272 (1855) 18, 19

Nardone v. United States, 308 U.S. 338 (1939) 37

North Georgia Finishing, Inc. v. Di-Chem, Inc.
.....U.S....., 95 S.Ct. 719 (1975) 21, 23, 33

Oklahoma Press Publishing Co. v. Walling,
327 U.S. 186 (1946) 24, 25, 26

Page

One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965) 20

Pearson v. Ray, 386 U.S. 547 (1967) 35

Phillips v. Commissioner, 283 U.S. 589 (1931) 22, 23, 28

Schneckloth v. Bustamonte, 412 U.S. 218 (1973) 27

Schwimmer v. United States, 232 F.2d 35 (9th Cir. 1957) 26

See v. City of Seattle, 387 U.S. 541 (1967) 32

Silverthorne Lumber Co. v. United States, 251 U.S. 358 (1920) 24, 25, 37

Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) 23, 34

Stanford v. Texas, 379 U.S. 476 (1965) 26

Stanford Daily v. Zurcher, 353 F.Supp. 124 (N.D. Cal. 1972) 32

United States v. Weingarden, 473 F.2d 454 (6th Cir. 1973) 17

United States v. White, 401 U.S. 745 (1971) 18

Vale v. Louisiana, 399 U.S. 30 (1970) 28

Warden v. Hayden, 387 U.S. 294 (1967) 28

Wong Sun v. United States, 371 U.S. 471 (1963) 37

Wyman v. James, 400 U.S. 309 (1971) 21

Statutory Material

United States Constitution:

Article I Section 8 Cl. 18 16

Fourth Amendment 6, 7, 8, 9, 10, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33, 34, 35, 38

Fifth Amendment 6, 8, 19, 21, 26

Page

United States Code, Title 26:

§ 2401, § 2403 27

§ 2426 35

§ 6213 27

§ 6321 2

§ 6331(a) and (b) 3, 8, 10, 16, 17, 23, 28

§ 6851 23

§ 6861(a) 4, 23

§ 6861(b) 23

§ 7302 31

§ 7421(a) 36, 37

§ 7426(a) (1) 4, 34, 37

§ 7608 31

United States Code, Title 28:

§ 1254 2

United States Code, Title 42:

§ 1983 35

Federal Rules of Appellate Procedure:

Rule 40 1

Federal Rules of Criminal Procedure:

Rule 41(e) 37

Miscellaneous

Civil Versus Criminal: Taxpayers Rights Under The Fourth and Fifth Amendments, 38 Brooklyn L. Rev. 130, 149-155 (1971) 26

Landynski, Search and Seizure and the Supreme Court 13, 15, 16

University Southern California Law Center Tax Institute, 1022-23 (1974) 26

In the Supreme Court of the United States

October Term, 1975

No. 75-235

G. M. LEASING CORP.,
Petitioners,

v.

UNITED STATES, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE PETITIONERS

OPINION BELOW

The Opinion of the Court of Appeals (App. to Petition pg. A-1) is reported at 514 F.2d 935.

JURISDICTION

The judgment of the Court of Appeals for the Tenth Circuit was entered on May 1, 1975. A timely petition for rehearing was filed pursuant to Rule 40, Federal Rules of Appellate Procedure, along with Suggestion for Rehearing En Banc on May 13, 1975. The

petition for rehearing was denied on June 17, 1975. Petition for Certiorari was filed on August 13, 1975 and granted December 15, 1975. The jurisdiction of this Court rests on 28 U.S.C. 1254.

QUESTION PRESENTED

Whether tax agents of the United States acted illegally in seizing automobiles and documents in violation of the petitioner G. M. Leasing Corporation's Fourth Amendment rights under the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourth Amendment of the Constitution of the United States provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Code, Title 26 § 6321, 68A Stat. 779, Aug. 16, 1954, c. 736, provided as of the dates involved in this case:

Lien for Taxes

> If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

United States Code, Title 26 § 6331, 80 Stat. 1135, Nov. 2, 1966, P.L. 89-719, Title § 104(a), 68A Stat. 783, Aug. 16, 1954, c. 736, provided as of the dates involved in this case:

Levy and distraint

> (a) *Authority of Secretary or delegate.*—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under Section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in Section 3401(d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(*b*) *Seizure and sale of property.*—The term 'levy' as used in this title includes the power of distraint and seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

United States Code, Title 26 § 6861, 68A Stat. 834, Aug. 16, 1954, c. 736, provided as of the dates involved in this case:

Jeopardy assessments of income, estate, and gift taxes.

(*a*) *Authority for Making.*—If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in Section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of Section 6213(a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof.

United States Code, Title 26 § 7426, P.L. 89-719, Title 1 § 110(a), Nov. 2, 1966, 80 Stat. 1142, provided as of the dates involved in this case:

Civil actions by persons other than taxpayers.

(*a*) *Actions permitted.*—

(1) *Wrongful levy.*—If a levy has been made

on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary or his delegate.

STATEMENT

On March 19, 1973, the Internal Revenue Service made an assessment of income taxes, penalties, and interest against George I. Norman, Jr. and his wife, Frances M. Norman. Simultaneously, it was determined that the collection of taxes was in jeopardy. Mr. Norman had been a fugitive from justice for several weeks. Shortly thereafter, within two days, the Internal Revenue Service agents made the determination that petitioner G. M. Leasing Corporation was an alter ego, nominee, or transferee of George I. Norman, Jr.; whereupon, all of the assets and books and records of G. M. Leasing Corporation were seized without notice of any kind to petitioner nor an opportunity to be heard. Two automobiles which were titled in the name of G. M. Leasing Corporation were seized by the Internal Revenue Service and turned over to lien creditors who sold said automobiles. (App. p. 33). The remaining automobiles belonging to G. M. Leasing Corporation are still being stored by the Internal Revenue Service.

On May 31, 1973, petitioner G. M. Leasing Corporation, a Utah corporation, filed suit in the United States District Court of Utah, against the United States, Department of Treasury, Internal Revenue Service and the named individual officers, agents and employees of the United States Internal Revenue Service. The petitioner G. M. Leasing Corporation alleged that the individual named respondents as agents of the Internal Revenue Service entered premises in Salt Lake County, Utah, and illegally seized automobiles and documents of the petitioner G. M. Leasing Corporation. It was alleged that the seizure was in violation of the Fourth and Fifth Amendments to the Constitution of the United States. The petitioner G. M. Leasing Corporation sought a return of all documents seized by agents of the United States, the return of motor vehicles seized by the United States and a suppression of evidence obtained as a result of such seizure including destruction of all photostats of books, records, and files of G. M. Leasing Corporation. Petitioner also sought general and punitive damages against the individual defendants as the result of their illegal search and seizure and damages against United States of America for allowing the alleged wrongful sale of two motor vehicles.

An answer and counterclaim were filed by respondents, admitting the seizure, but denying the property seized was that of the petitioner G. M. Leasing Corporation. Instead the respondents claimed that the property belonged to George I. Norman, Jr. The answer alleged the jeopardy assessment for income taxes, penalties and interest made against George I. Norman, Jr.

The counterclaim alleged that the petitioner G. M. Leasing Corporation was the alter ego, nominee, or transferee of George I. Norman, Jr., and the Internal Revenue Service sought foreclosure on the automobiles seized.

During the pendency of the action assets were seized from George I. Norman, III, the son of George I. Norman, Jr. The Internal Revenue Service again claimed that George I. Norman, III, was an alter ego, nominee, or transferee of George I. Norman, Jr. The motion was allowed and George I. Norman, III filed his complaint in intervention alleging in essence the same matters as G. M. Leasing Corporation and also seeking similar relief.

Trial was had in the United States District Court for the District of Utah on May 10, 1974. The trial court found that the individual Internal Revenue Service agents had acted beyond the scope of their authority and had violated the Fourth Amendment to the Federal Constitution in searching the offices of G. M. Leasing Corporation and seizing its books and records. The trial court awarded compensatory damages against the individual agents in an amount to be thereafter determined. The trial court also found that one individual agent had acted with malice and the court awarded punitive damages against that agent. The court further ordered that the books and records which had been illegally seized be suppressed as evidence and that the photocopies of those books and records that had been made by the government should be destroyed. The

court found that G. M. Leasing Corporation and George I. Norman, III, were not the alter egos, nominees, or transferees of George I. Norman, Jr., and that their assets should be returned to them and that damages should be awarded against the United States of America for the value of two automobiles of G. M. Leasing Corporation that had been sold. The Government's counterclaim was dismissed with prejudice.

The Court of Appeals for the Tenth Circuit reversed the judgment of the District Court concluding that the seizure was valid under the provision of 26 U.S.C. § 6331(a). The Court did not reverse the trial court's order to return the property that had been seized from George I. Norman, III.

SUMMARY OF ARGUMENT

A corporation's records and automobiles are entitled to protection from unreasonable searches and seizures. Whether the seizure of petitioner's property was claimed for civil or criminal purposes the Fourth Amendment and Fifth Amendment provide standards by which the legality of the seizure is to be judged. The Fourth Amendment implies a preference for a warrant before private property can be searched or seized. Only exigent circumstances justify a departure from the warrant requirements and a determination by a neutral and detached magistrate that a seizure is justified.

Tax seizures are not immune from the requirements of the Fourth and Fifth Amendments and some determination of probable cause by an objective judgment should either be a prerequisite to or afforded immediately after the seizure of a corporation's property and records. Actions taken by government agents in violation of the Fourth Amendment give rise to a cause of action against the respondents for damages and affirmative injunctive relief. The conduct of the respondents in the instant case indicates that they acted in disregard of Fourth Amendment standards and without good faith.

ARGUMENT

POINT I

THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROHIBITS UNREASONABLE SEIZURES CONDUCTED BY AGENTS OF THE UNITED STATES WITH A VIEW TOWARDS CIVIL OR CRIMINAL PROCEEDINGS IN ENFORCEMENT OF THE REVENUE LAWS.

The conduct of agents and employees of the Internal Revenue Service in seizing automobiles and records of G. M. Leasing Corporation was in violation of the Fourth Amendment to the Constitution of the United States because such conduct constituted an unreasonable seizure. G. M. Leasing Corporation in response to the action of tax agents of the United States brought suit against the United States for an alleged wrongful tax levy and seizure of assets of G. M. Leasing Corporation and sought return of property seized.

G. M. Leasing Corporation also sought damages against the individual named defendants for violation of its Fourth Amendment rights based on the search of its office and seizure of its records. Subsequent intervention was allowed by the trial court for George I. Norman, III whose property was also seized. The United States counterclaimed for foreclosure on the property seized. The District Court for the District of Utah entered judgment in favor of Petitioner G. M. Leasing Corporation ordering the return of seized assets, damages yet to be determined, the return of all books and records seized, the destruction of photostats that had been made of the records, and the prohibition of their use by the respondents. The Court of Appeals for the Tenth Circuit reversed the judgment in favor of G. M. Leasing 514 F.2d 935. In reference to the seizure of the assets of G. M. Leasing Corporation the Court of Appeals held that: ". . . [Respondents] conducted a statutorily valid seizure." 514 F.2d 941. The Court concluded 26 U.S.C. §6331 (a) and (b) was sufficient authority for the action of the respondents.

The facts pertinent to this inquiry disclose that G. M. Leasing Corporation was, at the time of respondents' seizure, a Utah corporation in good standing. (R. Vol. I 13 lines 10-15; Exhibit No. 1) G. M. Leasing Corporation was incorporated for the purpose of owning and leasing various expensive motor vehicles. (App. 51). G. M. Leasing Corporation had not actually begun leasing autos, because none of the cars they owned were in good enough shape. (App. 52). However, G. M. Leasing had undertaken many of the prerequisites for engaging in business. It had obtained lease forms.

(App. 53). It had contacted prospective lessees, (App. 53). It had initiated inquiries to obtain either a dealership or better purchase prices for the cars it acquired. (App. 53-54). There was evidence and conflicting evidence regarding other attributes of G. M. Leasing's separate corporate existence. There was conflicting evidence as to whether stock was issued. A stockholder testified that he had been issued stock (R. Vol. I, page 52, line 5-12; page 53, lines 17-18). However, an officer and director testified that no stock had been issued. (App. 43). While one officer and director testified that there were no meetings of the Board of Directors; (App. 43); another officer testified that meetings took place on a daily basis although they were not formally designated as directors' meetings. (App. 53-54). The trial court found that G. M. Leasing Corporation was not an alter ego, nominee, or transferee of George I. Norman, Jr. (R. Vol. 2, page 87, findings 22- page 88 findings 32). The Court of Appeals reversed.

On March 19, 1973, agents of the Internal Revenue Service made a jeopardy assessment of income tax due and owing the United States for the years 1970 and 1971 from George I. Norman, Jr., and Frances M. Norman. Neither of these persons are parties to this action. Subsequently, on March 22, 1973, respondents acting without a search warrant entered the garage and building at 4751-53 Holladay Boulevard in Salt Lake County, State of Utah. The premises were the offices of G. M. Leasing Corporation and the residence of George I. Norman, III as well as the office of George I. Norman, Jr. (App. 19, 32-33, 34-

35). The agents entered the premises by engaging locksmiths to open the locks without the permission of petitioner or any other person having an interest in the premises. (App. 19-20). The group manager of the Internal Revenue office in Salt Lake City, testified that it was not a common practice to use a warrant or summons under such circumstances (App. 19). A lock was removed by the locksmiths in order for the respondents to gain entrance (App. 20). The removal of the lock was apparently done at the request of respondents Haacke and White, agents of the Internal Revenue Service (App. 20-21). Subsequent to entry on the premises by some of the respondents, George I. Norman III arrived (App. 24) and a determination was made by the agents that there may be a possible violation of constitutional rights by seizing any property and the premises were locked by restoring the original locks (App. 24). Two days later, respondents made a decision again to enter the premises. They acted without notice of any kind to G. M. Leasing Corporation, and upon the conclusion that G. M. Leasing Corporation was an alter ego, nominee, or transferee of George I. Norman, Jr. They then searched the premises and seized books and records of G. M. Leasing Corporation. (App. 22-24). All assets of G. M. Leasing Corporation including seven automobiles and a bank account were seized as was certain stock, later determined to be that of George I. Norman, III. The seizure of the automobiles and records was made with the aid of investigating officers of the Intelligence Division of the Internal Revenue Service. While the special agents were present, a commercial storage van was used to haul away the Corporation's records (App.

28-29). The agents had been told by Internal Revenue Service lawyers to seize property including books and records but not to look at them and to seal them. They were apparently opened and photocopied some time later. (App. 27-30). Photostats of some of the records were apparently turned over to the FBI for their investigative purposes. (Supplemental Memorandum of Appellants Tenth Circuit p. 2). At the time of the second seizure, agents of the I.R.S. told intervenor he would have to move and find a new home. (App. 34-35). Intervenor moved to his family's residence and the next day IR[illegible] agents raided that premises also. (App. 35). While there, agents threatened to throw George I. Norman, III in jail, seize his family's house and even if he didn't allow them to make an inventory of the home and premises they were going to do it anyway. (App. 35).

Based on the above, the trial court found that the respondents "did intentionally commit forced entry, search and seizure knowing full well that they were violating the rights of G. M. Leasing Corporation and Intervenor . . ." (R. Vol. 2, 86 para. 8).

It is submitted that the actions of the respondents were in violation of the Fourth Amendment of the Constitution of the United States. The broad powers of search and seizure known at common law were often used in enforcement of the revenue laws. However, revenue enforcement was not free from some restriction. In Landynski, *Search and Seizure and the Supreme Court*, p. 25, it is observed:

It was through efforts to control abusive enforcement of tax laws that limits were first placed on search and seizure. At the urging of the new king, William of Orange, one tax was abolished by Parliament specifically on the ground that the searches required in its enforcement constituted 'a badge of slavery upon the whole people exposing every man's house to be entered into and searched by persons unknown to him.' In 1733 a tobacco and wine tax proposed by Walpole failed of parliamentary enactment because of its search provisions, though under its terms only warehouses would have been subject to search on a general warrant; a special warrant would have been required for the search of dwellings. And in 1763 William Pitt proclaimed against the cider tax and its enforcement provisions. In the words which have rung out through the centuries, he cried: 'The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail—its roof may shake—the wind may blow through it —the storm may enter—the rain may enter—but the King of England cannot enter; all his force dares not cross the threshold of that ruined tenement.'

The general warrants and writs of assistance in prevalent use by the English Crown were well known to the founders of the American Constitution. The case of *Entick v. Carrington*, 19 Howell State Trials 1029 (1765) where papers of a publisher were seized, and a private action for their return was upheld where the seizure was excessive, was apparently well known to colonial leaders. Writs of assistance to collect various customs and taxes were frequently used in the American colonies. In Massachusetts, the governor of the colony would often issue writs of assistance in aid of customs

officers. The objections to the practice were substantial which led the governor to advise officers to apply for writs in the Superior Court. Landynski, *supra*, p. 32. Also, in Massachusetts, the Declaration of Rights adopted in 1780 expressly prohibited unreasonable searches and the substance of its provisions adopted in other colonies. Landynski, *supra*, p. 38.

With reference to the Fourth Amendment and its relation to the history of use of general warrants it has been observed:

> In recognition of this national criticism, President Washington in his first inaugural address urged modification in the Constitution to safeguard 'the characteristic rights of freemen' but refused to make 'particular recommendations.' James Madison, a leading light in the Convention, as in the struggle for ratification, committed his great prestige to the fight for a bill of rights and assumed the role of sponsor in pushing the amendments through Congress. He specifically adverted to the need for search safeguards in the light of the necessary and proper clause: 'The General Government has a right to pass all laws which shall be necessary to collect its revenue: the means for enforcing the collection are within the discretion of the Legislature: may not general warrants be considered necessary for this purpose . . .?' Madison's solution to the problem was a clause to read as follows: 'The rights of the people to be secure in their persons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly

describing the places to be searched, or the persons or things to be seized.'

Madison's draft proposal for a bill of rights was referred to committee, where the search provision was altered to read: 'The right of the people to be secured in their persons, houses, papers, and effects, shall not be violated by warrants issuing without probable cause, supported by oath or affirmation, and not particularly describing the place to be searched and the persons or things to be seized.' Landynski, *supra*, p. 41.

It is submitted that the history of the Fourth Amendment supports a conclusion that it was intended to restrict seizures made in aid of revenue laws. Indeed, unless the "necessary and proper" clause Article I, Section VIII, C1. 18 Constitution of United States granting general Congressional power was restricted by the Fourth Amendment, general unlimited government power to intrude into the privacy of individual citizens would be sanctioned.

The government and the Tenth Circuit Court of Appeals relied on 26 U.S.C. 6331(a) and (b) for the authority of the respondents to act in the fashion they acted in this case. The government has contended and the Court of Appeals accepted the position that the statutory process set out by Congress is sufficient to meet the Fourth Amendment standards.

Even assuming the Internal Revenue Service agents were intending to levy and not search, it is submitted that the executive authority to levy under Section 6331 does not contemplate the seizure of records not available to satisfy the tax assessment. Section 6331 (b) provides: "A levy shall extend only to property possessed and obligations existing at the time thereof." It would appear that only assets real, personal, tangible or intangible capable of satisfying the lien for taxes are the proper subject of levy. It is submitted the extensive seizure of records in this case was outside the statute. The Government's contention that it was merely seizing the records because the records may have concealed assets seems specious in view of Intelligence Agents' participation in the seizure and the copying of records and the subsequent transmission of some of them to the Federal Bureau of Investigation.

The proceedings in this case appear to have had some direction towards criminal investigation and possible prosecution since the seizure was conducted in part by agents of the Intelligence Division of the Internal Revenue Service and records taken in the seizure found their way into the hands of the FBI. As the trial court found, it is submitted that the conduct of the agents in this case cannot be said to be exclusively and in "good faith" directed towards a civil distress process. cf. *Donaldson v. United States*, 400 U.S. 517 (1971) requiring "good faith" on the part of Internal Revenue agents in the use of a civil summons. Also, *United States v. Weingarden*, 473 F.2d 454 (6th Cir. 1973).

It is submitted that especially where there is reasonable evidence to suggest that criminal investigation

was an allied purpose to the seizure of property of records that the Fourth Amendment should be applicable. The "sole purpose" test alluded to in *Donaldson v. United States, supra* is unworkable and inapplicable in the seizure area. It must be concluded that a seizure made in violation of a constitutionally reasonable expectation of privacy whether for tax purposes or otherwise is contrary to the Fourth Amendment. *Katz v. United States* 389 U.S. 347 (1967); *United States v. White*, 401 U.S. 745 (1971).

Even assuming that the seizure in the present case was solely a civil levy and seizure, it is submitted that Fourth Amendment safeguards apply. In addition the previously stated history surrounding the adoption of the Fourth Amendment, a synthesis of this Court's opinions would also reveal that the Fourth Amendment applies in purely civil proceedings as well as criminal proceedings.

In *Murray v. Hoboken Land Company*, 18 How. 272 (1855), this Court considered the question of whether a distress levy against a revenue collector issued by an executive official of the United States was a violation of the Fourth Amendment. The Court gave scant attention to the issue merely observing that the amendment had "no reference to civil proceedings for the recovery of debts of which a search warrant is not made part." p. 285. In light of the history of the Fourth Amendment, already discussed, it is questionable whether that conclusion was warranted. One of the concerns of the country's founders was the use of general warrants and writs of assistance in aid

of tax and customs collections. The conclusion in *Murray* fails to consider the history of the adoption of the Fourth Amendment. Furthermore, the *Murray* case has been substantially eroded by later decisions of this Court interpreting and applying the Fourth Amendment. In *Boyd v. United States*, 116 U.S. 616 (1886), the government sought to confiscate glass brought into the United States in violation of the custom laws. The case was, in effect, a revenue case. The prosecution did not seek a criminal penalty but only a civil confiscation and the forfeiture of the glass to the United States. The Court in combining the application of the Fourth and Fifth Amendments held that the defendants could not be compelled to produce an invoice of the transaction which would have supplied the needed government evidence to sustain the forfeiture. The Court ruled:

> It is our opinion, therefore, that a compulsory production of a man's private papers to establish a criminal charge against him or to forfeit his property is within the scope of the Fourth Amendment to the Constitution, in all cases in which a search and seizure would be; . . . (116 U.S. at 622).

The Court relied heavily on *Entick v. Carrington, supra*, which had recognized a civil cause of action for illegal seizure of private papers.

In *In re Jackson*, 96 U.S. 727 (1878), a habeas corpus action, the Court in a dictum statement said that the Fourth Amendment prohibited postal authorities from opening sealed letters in the mails except when

authorized by warrant. The case is significant in that the Court acknowledged the power of Congress to regulate and control the mails, but ruled that such power must be limited by the right of the citizenry to be free from unreasonable searches and seizures of private papers. Subsequent cases of this Court have applied the scope of the Fourth Amendment in such a way that it cannot be said to be restricted to criminal cases.

In *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965), the unanimous court held the exclusionary rule enunciated by *Mapp v. Ohio*, 367 U.S. 643 (1961) applied to a forfeiture proceedings. The Court cited to *Boyd v. United States, supra*, noting that it was not a criminal case. The Court observed that in the particular forfeiture proceeding, the owner of the automobile had an interest in not losing his property and that the Fourth Amendment provided a protection for his property interest. The Court stated:

> It would be anomalous indeed, under these circumstances, to hold that in the criminal proceeding the illegally seized evidence is excludable, while in the forfeiture proceeding, requiring the determination that the criminal law has been violated, the same evidence would be admissible.

Thereafter, in *Dyke v. Taylor Implement and Mfg. Inc.*, 391 U.S. 216 (1968), the Court applied the Fourth Amendment to a contempt proceeding associated with a labor dispute.

Courts of Appeal have applied the exclusionary

rule to non-criminal administrative hearings. ***Knoll Associates Inc. v. F.T.C.*** **397 F.2d 570 (7th Cir. 1968)** and the Tax Court has held the Fourth Amendment applicable in a civil tax proceeding. ***Efrian T. Suarez,*** **58 T.C. 792 (1972).** Similarly, in applying the Fifth Amendment, this Court has noted that civil tax proceedings often have corollary criminal ramifications. ***Mathis v. United States,*** **391 U.S. 1, (1968)** required ***Miranda*** warnings be given to a defendant who was serving a sentence in a Florida jail where a routine tax investigation was being conducted of a claim for tax refunds by the defendants.

Although in ***Wyman v. James,*** **400 U.S. 309 (1971)** this Court upheld welfare inspections conducted without a warrant to determine compliance with a state AFDC program, the Court noted that prior written notice was given of the home visit, forcible entry was not made, the welfare recipient had the right to refuse the visit, and that if the search were to become intrusive it could violate the Fourth Amendment. The procedures approved in ***Wyman*** were not observed in the Internal Revenue Service's seizure of petitioner's offices, assets and records. The ***Wyman*** case presents a situation wholly different than that presented in the instant case.

In Mr. Justice Brennan's concurring opinion in the recent case of ***Laing v. United States,*** **44 LW. 4035** at 4043, held that constitutional safeguards should apply in IRS seizures. That question was expressly reserved by the majority in ***Laing, supra*** at 4042, note 26 although the Court did cite to ***North Georgia Finishing,***

Inc. v. Di-Chem, Inc., 419 U.S. 601, 607 (1975); *Mitchell v. W. T. Grant, Co.*, 416 U.S. 600, 610-611 (1974); and *Fuentes v. Shevin*, 407 U.S. 67, 72 (1972).

In the respondents' reply brief to the petition for certiorari it was contended that *Phillips v. Commissioner*, 283 U.S. 589 (1931) was sufficient precedent to support the actions of the revenue agents in the instant case. The dissenting opinion in the *Laing* case also relied on *Phillips*. The *Phillips* case did not consider the application of the Fourth Amendment to a levy and distraint procedure similar to that employed in this case. Notice was given to stockholders of the delinquent taxpayer corporation against whom collection was sought before any seizure was undertaken and a more formal procedure ensued. The seizure, if any, was not comparable to that of the instant case. The court simply indicated that the summary distraint process employed in that case was adequate compliance with Fifth Amendment due process of law. The court stated in that case the mere postponement of judicial inquiry was not a violation of due process of law under the procedures Congress had established. In Note 5, page 595 of 283 U.S., the court refers to the "ancient English practice of summary seizure of property of a Crown debtor. . ." However, it did not give consideration to the history of the Fourth Amendment which would suggest that the summary seizure of property from an area where there was a reasonable expectation of privacy without a probable cause determination or hearing was not to be sanctioned. Additionally, recent cases from this court have substantially undermined the broad pronouncements in *Phillips v. Commissioner, supra,*

Fuentes v Shevin, supra; Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); *North Georgia Finishing, Inc. v. Di-Chem, Inc., supra.* In *Fuentes v. Shevin, supra,* this Court acknowledged the *Phillips* decision but emphasized that its application approved in situations where it was "essential that governmental needs be immediately satisfied." 407 U.S. at 92. In *North Georgia Finishing, Inc.*, this Court held unconstitutional a Georgia process similar to the tax seizure process at 26 U.S.C. § 6331 when applied against a corporate bank account. In *Laing v. United States, supra,* this Court in a deficiency case under 26 U.S.C. § 6851 ruled that failure to comply with 26 U.S.C. § 6861(a) and (b) rendered the assessment and subsequent seizure of taxpayer's property under 26 U.S.C. § 6331(a) defective and allowed taxpayer injunctive relief. The Court noted the construction given to the Internal Revenue Code provisions rendered unnecessary the consideration of the continued viability of *Phillips v. Commissioner, supra.* 44 LW 4042 n. 26. While there are some distinctions between the IRS seizures in the *Phillips* case and in the present case, which would allow the court to decide in petitioner's favor without rejecting the rationale of *Phillips* but restricting it to its particular facts, the Court may wish to reexamine the holding of *Phillips* in light of its more recent decisions which are cited herein. Consequently it is submitted that the Fourth Amendment is applicable to a seizure proceeding of the nature found in this case whether the proceeding be denominated civil or criminal.

There is also no question that a corporation such as G. M. Leasing Corporation has the right to assert protections of the Fourth Amendment from having its corporate papers and properties seized contrary to law. *Silverthorne Lumber Co. v. United States*, 251 U.S. 358 (1920); *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186 (1946): Irrespective of the government's alter-ego contentions, G. M. Leasing Corporation as registered owner and possessor had sufficient interest in the automobiles and records seized to give it standing to challenge the seizure, *Jones v. United States*, 362 U.S. 257 (1960); *Brown v. United States*, 411 U.S. 223 (1973); *Mancusi v. DeForte*, 392 U.S. 364 (1968).

In *Silverthorne v. United States, supra*, this Court acknowledged the Fourth Amendment protects a corporation from compulsory production of corporate books and papers and that when items have been obtained as a result of a previous unconstitutional search that they may not thereafter be used by the government for its benefit. In the *Silverthorne* case, a United States Marshal went to the office of the company and made a clean sweep of all books, papers and documents. Photographs and copies were thereafter made of the documents seized and then subpoenas issued to produce the originals. This Court speaking through Mr. Justice Holmes observed:

> The proposition could not be presented more nakedly. It is that although of course its seizure was an outrage which the Government now regrets, it may study the papers before it returns them, copy them, and then may use the knowledge that it has gained to call upon the owners in a more regular form to produce them; that the protection of the Constitution covers the physical possession but not any advantages that the Government can gain over the object of its pursuit by doing the forbidden act."
>
> . . . In our opinion such is not the law. It reduces the Fourth Amendment to a form of words. 232 U.S. 393. The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all.

In this case, the action of the revenue agents in making such a broad and sweeping seizure of property that was claimed to be the corporate property of G. M. Leasing Corporation when the agents in fact were interested in property of George I. Norman, Jr. and his wife as much as that of G. M. Leasing Corporation amounts to a similar subterfuge. Substantial amounts of books and documents were seized and carried away in a moving van, scrutinized, copied, and disseminated to other government agencies. The actions of the government agents in the instant case are not dissimilar to those disapproved in the *Silverthorne Lumber* case.

In *Oklahoma Press Publishing Co. v. Walling, supra*, Justice Rutledge speaking for the Court stated that the Fourth Amendment:

> . . . guards against abuse only by way of too much indefiniteness or breadth in the things required to be 'particularly described,' if also the inquiry is one the demanding agency is author-

> ized by law to make and the materials specified are relevant. The gist of the protection is in the requirement, expressed in terms, that the disclosure sought shall not be unreasonable. 327 U.S. at 208.

A subpoena couched in terms as broad as the seizure in the instant case would be beyond the scope of Fourth Amendment allowances. *Hale v. Henkel*, 201 U.S. 43 (1906); *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186 (1946). *Schwimmer v. United States*, 232 F.2d 35 (9th Cir. 1957); 26 *Univ. So. Calif. Law Center Tax Institute*, 1022-23 (1974); Civil Versus Criminal Taxpayers Rights Under the Fourth and Fifth Amendments, 38 *Brooklyn L. Rev.* 130, 149-155 (1971). And a search warrant could not have justified the extent of the seizure of property and records without greater particularity. *Stanford v. Texas*, 379 U.S. 476 (1965); *Hill v. Phillpot*, 445 F.2d 144 (7th Cir. 1971), (evidence excluded obtained by in broad search warrant in tax investigation.) Indeed, it was conceded that the jeopardy assessment on which the seizure was attempted to be justified was itself in error. The scope of the seizure was similar to those condemned in *Kremen v. United States*, 353 U.S. 346 (1957) and *Go-Bart Importing Co. v. United States*, 282 U.S. 344 (1931).

In *Gouled v. United States*, 225 U.S. 298 (1921) this Court disapproved the use of subterfuge to gain access to private papers to violate the Fourth Amendment. As pointed out before, the evidence in the instant case supports a conclusion that government agents attempted by subterfuge to rely upon an otherwise inapplicable process to gain access to property and rec-

ords for purposes of criminal investigation as well as just satisfying the revenue laws and that the seizures were conducted without a prior determination of probable cause, were made without a warrant and not under exigent circumstances, and were without any reasonable limits.

POINT II

IN THE ABSENCE OF EXIGENT CIRCUMSTANCES THE FOURTH AMENDMENT REQUIRES A WARRANT PRIOR TO THE SEIZURE OF PROPERTY OR EVIDENCE BY INTERNAL REVENUE SERVICE AGENTS.

This Court has on many occasions indicated that a search not predicated on a search warrant is per se unreasonable. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *Chambers v. Maroney*, 399 U.S. 42 (1970). *Katz v. United States*, 389 U.S. 347 (1967). Since the Fourth Amendment expressly refers to seizures as well as searches it can be assumed that a seizure not based on a warrant is per se unreasonable unless there are exigent circumstances that dissipate the need for a warrant. Adequate alternative process that affords an equivalent protection may also suffice to dispense with a warrant in special situations not present in this case. Cf. 26 U.S.C. § 6213; 26 U.S.C. § 2401.[1] In the in-

[1] Petitioner will not attempt to assess the constitutionality of alternative processes that Congress may have provided in tax deficiency cases since such alternatives were not employed in this instance.

stant case the government agents purported to rely upon the provisions of 26 U.S.C. § 6331 (a) and (b) to support their action. It is submitted that these provisions cannot justify the action that respondents took against petitioner in this case.

In some instances it may be that in tax seizure matters that circumstances are so compelling that immediate action is necessary to prevent the destruction or removal of property, and in such cases careful articulation of facts justifying action and excusing the Fourth Amendment warrant requirements may sustain a seizure. *Warden v. Hayden*, 387 U.S. 294 (1967); *Carroll v. United States*, 267 U.S. 132 (1925); *Husty v. United States*, 282 U.S. 694 (1931).

No exigent circumstances have been established in the instant case.

It has been noted by this Court the levy and distraint provisions under the Internal Revenue laws dispensing with notice and opportunity to be heard before seizure arises out of necessity in enforcement of the tax laws, *Phillips v. Commissioner, supra; Laing v. United States, supra.* Petitioner claims that blanket provisions cannot control all cases and that each case must be judged on its own facts as to whether or not exigent circumstances exist so that seizure without notice for determination of probable cause may occur. Petitioner contends that absent a showing of exigent circumstances making necessary the immediate seizure of property that a seizure warrant must be obtained. *Coolidge v. New Hampshire, supra; Vale v. Louisiana*, 399 U.S. 30 (1970).

This Court has held it a prerequisite to the search or seizure of property that a warrant issue upon the judgment of a neutral and detached magistrate finding probable cause for the seizure or search and specifying with particularity the items to be seized. *Coolidge v. New Hampshire, supra.* In the instant case, there was no control, as a practical matter, on the judgment of the agents as to whether or not to seize or what assets were to be seized. The vehicles seized in the instant case were claimed by petitioner and intervenor to be the property of G. M. Leasing Corporation. The respondents seized the vehicles contending they were the property of George I. Norman, Jr. and his wife. The determination as to whether there was probable cause for such a belief and thus to seize the vehicles should have been made, by a magistrate rather than the judgment of government agents engaged in the competitive enforcement of the tax and criminal laws of the United States. *Katz v. United States, supra; Johnson v. United States*, 333 U.S. 10 (1948).

The facts of the instant case show a radical departure from the notion of a neutral detached magistrate's decision. The first step leading to the seizure was an assessment. In the instant case, no "thirty day letter" or notice of any kind was given to taxpayer prior to the assessment (although George I. Norman, Jr. was a fugitive, his wife who was also assessed, was present and Mr. Norman had left behind him not only his assets but also a power of attorney).

This first step, the assessment, was prepared by defendant Phillip Clayton. (App. 25). Clayton, an In-

ternal Revenue agent had audited Norman for four previous years. (App. 26). There was question as to the manner in which Mr. Clayton had handled the previous years' audits and there was also evidence of Clayton's malice or at least disparagement of Norman in his prior audits. (R. Vol. I, pages 36-38).

The assessment Mr. Clayton prepared was admittedly erroneous. Among other things, he failed to give Norman credit for a $290,000 payment which he knew Norman had paid; (App. 26-27), he prepared penalties and interest as if no payment had been made; he included items in income which he admitted on the witness stand were not income; (App. 27), he gave no credit for expenses but admitted that he knew that Norman had extraordinarily high business expenses. (App. 26). The Government attorney at the trial stipulated that the assessment was erroneous. From that initial basis, the erroneous assessment, the seizure originated.

Thereafter, the Internal Revenue Service, not a neutral detached magistrate, determined that the collection of taxes for both Mr. and Mrs. Norman was in jeopardy. Again, Phillip Clayton recommended the decision. (App. 26).

The final step for seizure was the determination that petitioner G. M. Leasing Corporation was the alter ego, nominee or transferee of George I. Norman, Jr. Again, no independent detached determination.

Phillip Clayton himself participated in the seizure raid along with the 13 other agents seven of which were intelligence officers, (App. 27). Phillip Clayton, a

Revenue officer, had never previously participated in a seizure nor was such activity part of his job description (App. 28). Clayton testified that his sole purpose for participating was to seize books and records. (App. 29). The evidence was replete and the trial court found that agent Clayton acted with malice. (R. Vol. II, page 86, para. 10). Respondent Clayton initiated the entire process that resulted in seizure of petitioner's property. The facts of this case demonstrate the need for a neutral detached determination prior to seizure.

Equally as important is that there be some specificity particularizing the things to be seized. The Fourth Amendment requirement of particularity was clearly violated in this case. The seizure in this case included boxes full of records and numerous motor vehicles without there being any prior probable cause determination that the items were properly subject to seizure in aid of the distraint process of the revenue laws or probable cause to seize the items for purposes of criminal investigation. Congress has expressly provided for a warrant process in tax matters. 26 U.S.C. § 7302; 26 U.S.C. § 7608. Consequently, the emergency distraint laws absent a warrant, as employed in this case, can only be harmonious with the Fourth Amendment where they are interpreted as applying under exigent circumstances and not sanctioning what, in effect, is a writ of assistance or general warrant.

This Court has previously required the application of the warrant process and some form of probable cause standard in less intrusive situations. *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967);

See v. City of Seattle, 387 U.S. 541 (1967). The *Camara* case recognized that "prompt inspection even without warrant" may occur in instances "that the law has traditionally upheld in emergency situations." 387 U.S. 539. The facts of the instant case show no emergency situation that would justify dispensing with a warrant. The assessment was made by the government on March 19, 1973, weeks after Norman became a fugitive. Not until days later did government agents move to the premises where the records and vehicles were seized. At that time, respondents had arranged to have various agents present and to employ private locksmiths to remove locks. They left the premises on March 21, 1973, replacing the locks but returned on the 23rd day of March, 1973, without a warrant to continue the seizure and arranged for a van to remove items seized. The taxpayer had not been present for a period of weeks. The books and papers were seized but not examined and photocopied for some period of time after their seizure. C.f. *Coolidge v. New Hampshire, supra.* Under these circumstances, there was ample time to obtain a warrant for the seizure or search of items properly sought. The right of the government to seize property and records in enforcement of the tax laws must be balanced against the Fourth Amendment privacy interests which a citizen, corporate or individual, has a constitutional right to expect. To allow such seizure is to substantially reduce the efficacy of the Fourth Amendment as well as to reverse the common law traditions that restricted the seizure of private papers. *Entick v. Carrington, supra*; Cf. *Stanford Daily v. Zurcher*, 353 F.Supp. 124 (N.D. Cal. 1972). In *Frank*

v. Maryland, 359 U.S. 360 (1959) a case the ultimate holding of which has been effectively undermined by *Camara v. Municipal Court of San Francisco, supra,* Justice Frankfurter noted the following with reference to the history of the Fourth Amendment:

> [T]wo protections emerge from the broad constitutional proscription of official invasion. The first of these is the right to be secure from intrusion into personal privacy, the right to shut the door on officials of the state unless their entry is under proper authority of law. The second, and intimately related protection is self-protection; the right to resist unauthorized entry which has as its design the securing of information to fortify the coercive power of the state against the individual, information which may be used to effect a further deprivation of life or liberty or property . . . . [*H*]*istory makes plain, that it was on the issue of the right to be secure from searches for evidence to be used in criminal prosecutions or for forfeitures that the great battle for fundamental liberty was fought.* 359 U.S. 365 (Emphasis supplied).

The observation of Justice Frankfurter on the Fourth Amendment application to forfeiture is still valid.

Even if exigent circumstances existed in the instant case which would dispense with the requirement of obtaining a warrant and determination of probable cause by a neutral and detached magistrate, due process would demand that some sort of a hearing be given before the Internal Revenue Service would be allowed to retain the property seized. See e.g., and *North Georgia Finishing, Inc. v. Di-Chem, Inc.* 419 U.S. 601 (1975);

Sniadach v. Family Finance Corp., 395 U.S. 337 (1969). Such was the gist of Mr. Justice Brennan's concurring opinion in the recent *Laing v. United States*, 44 LW 4035, 4043. Although 26 U.S. 7426, would allow an alleged alter ego such as G. M. Leasing Corporation to file suite in District Court for return of seized property such is not expeditious or adequate enough to satisfy due process standards.

As constitutional safeguards apply to IRS seizures, the provisions of the Fourth Amendment requiring the issuance of a warrant based upon an independent, neutral, and detached determination of probable cause should be a prerequisite. If, because of exigent circumstances of the particular case, the requirements of a warrant should be dispensed with, then due process demands that immediately subsequent to the seizure a hearing be afforded to determine the right of taxpayers and persons in positions similar to G. M. Leasing Corporation.

POINT III

BECAUSE OF THE WRONGFUL SEIZURE ACTION OF THE RESPONDENTS THE TRIAL COURT PROPERLY FOUND LIABILITY FOR DAMAGES AND AWARDED AFFIRMATIVE RELIEF.

The action against the individual defendants was predicated in part by this Court's decision in *Bevin v. Six Unknown Named Agents*, 403 U.S. 388 (1971) where this Court held that even though Congress had not provided a tort remedy for violation of Fourth

Amendment rights that a complaint alleging a Fourth Amendment violation by federal agents acting under color of their authority would give rights to a federal cause of action for damages. This action is not to be confused with petitioner's claim for wrongful levy under 26 U.S.C. § 2426. The latter cause of action is against the United States for return of seized assets not belonging to the delinquent taxpayer. The former cause of action is against the individual agents who participated in the search of petitioner's office and intervenor's residence and seizure of books and records. The trial court found that petitioner should have recovery against the respondents for damages for their respective violations. The amount is yet to be determined. It is submitted that an analysis of the evidence shows a blatant insensitivity to the constitutional rights of G. M. Leasing Corporation and to the obvious damage of G. M. Leasing Corporation. On remand of *Bevins* (2nd Cir. Court of Appeals 456 F.2d 1439) the Court ruled that a defense of good faith would be available to the defendants in that case who may have violated Fourth Amendment rights of a person. The court applied a standard similar to that applied by this Court in *Pearson v. Ray*, 386 U.S. 547 (1967) in interpreting 42 U.S.C. § 1983. In the instant action, the respondents did not specifically plead good faith in their answer or counterclaim. (R. Vol. 2 p. 65), but relied more on sovereign immunity and the legality of their actions. The trial court, however, found in favor of the petitioner. The evidence amply justifies that finding. The respondents did not make an effort to obtain a search warrant or to proceed by subpoena even though ade-

quate time to obtain such a warrant existed. The assessments were admittedly and knowingly erroneous. Agents arranged to forcefully remove the locks at petitioner's office and entered to seize items. They returned a second time again without a warrant, and proceeded to seize the property and records of the petitioner in an indiscriminate fashion. The records were later photostated and some transmitted to the FBI. When George I. Norman, III, the intervenor in the action below, protested that the property was that of G. M. Leasing Corporation, he was threatened with imprisonment and that his mother's home and his family's property would be seized. The search was conducted not by agents concerned with revenue alone, but also by agents of the Intelligence Division thus clearly indicating an intent to seize evidence for criminal investigation. The agents were aware on March 21, 1973, that there were constitutional problems associated with their actions, but later decided to disregard their own intuition. Under these circumstances, the Court's determination that judgment should be awarded in favor of petitioner and against respondents is reasonably supported by the evidence.

Additionally, the trial court was within its prerogative of awarding petitioner affirmative relief. Such relief is not barred by 26 U.S.C. § 7421(a). The relief is properly in aid of the vindication of petitioner's Fourth Amendment rights and therefore, not subject to the above statutory restraint that might otherwise be applicable. *Laing v. United States, supra.* Compare *Bob Jones University v. Simon,* 416 U.S. 725 (1974) and *Alexander v. American United, Inc.*, 416 U.S. 752

(1974). Also so much of the relief as seeks return of the seized property from the United States is expressly exempted from 26 U.S.C. § 7421(a) and sanctioned by 26 U.S.C. § 7426(a).

This Court has recognized that the government may not benefit by using evidence obtained, *Silverthorne Lumber v. United States, supra,* nor evidence derived from illegal activity. *Wong Sun v. United States,* 371 U.S. 471 (1963); *Nardone v. United States,* 308 U.S. 338 (1939). It is indeed more difficult in the event of a criminal prosecution for a defendant to determine whether evidence illegally obtained resulted in additional evidence being obtained. This is especially so in the case of matters involving records and the complexities of a possible tax prosecution. In the event of criminal prosecution of G. M. Leasing Corporation, it might be very difficult to ascertain if the government derived any benefit from its illegal actions in conducting the instant seizures. Affirmative injunctive relief granting the return of evidence and prohibiting its use would seem to be in harmony with other actions of this Court and decisions of the Courts of Appeals granting affirmative relief against police misconduct. *Allee v. Medrano,* 416 U.S. 802 (1973); *Lankford v. Gelston,* 364 F.2d 197 (4th Cir. 1966); *Gomez v. Layton,* 394 F. 2d 764 (D.C. Cir. 1968). Injunctive relief is equally necessary and harmonious with this Court's holding in *Bevins v. Six Unknown Named Agents, supra,* as damages were in that particular situation. Plaintiff also relied on Rule 41(e) of the Federal Rules of Criminal Procedure in seeking return of the property illegally seized.

The property illegally seized should be returned, damages allowed, yet to be proved against the individual respondents, and the government precluded from exploiting the evidence seized. The government should not thereafter be allowed to proceed to seize the property again without meeting Fourth Amendment standards.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

RICHARD J. LEEDY
744 East 300 South
Salt Lake City, Utah 84102
Attorney for Petitioner

Supreme Court, U. S.
FILED
MAY 28 1976
MICHAEL RODAK, JR., CLERK

No. 75-235

In the Supreme Court of the United States

OCTOBER TERM, 1975

G. M. LEASING CORP., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENTS

ROBERT H. BORK,
Solicitor General,

SCOTT P. CRAMPTON,
Assistant Attorney General,

STUART A. SMITH,
Assistant to the Solicitor General,

LEONARD J. HENZKE, JR.,
STEPHEN M. GELBER,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Constitutional and statutory provisions involved	2
Statement	3
Summary of argument	17
Argument:	
I. The warrantless seizure by the Secretary of the Treasury of property of a delinquent taxpayer, pursuant to levy under Section 6331(a) of the Internal Internal Revenue Code, does not violate the Fourth Amendment	21
A. Introduction	21
B. This Court has upheld the validity under the Fourth Amendment of warrantless seizures of the property of delinquent taxpayers	30
C. Long before the adoption of the Fourth Amendment, delinquent taxpayers in England and America were subject to warrantless seizures of their property in aid of the collection of taxes	40
D. The Fourth Amendment was not intended to limit the Treasury's power to make warrantless seizures of property of delinquent taxpayers	49

Argument—Continued Page

E. The reasons for requiring a warrant prior to an investigative search are inapplicable to the seizure of the taxpayer's property in this case ... 61

F. The conduct of the revenue agents in executing the levy and seizure in this case was reasonable ... 72

II. At all events, petitioner is not entitled to the relief it seeks ... 76

Conclusion ... 82

Appendix A ... 1a

Appendix B ... 11a

Appendix C ... 16a

Appendix D ... 18a

CITATIONS

Cases:

Abel v. *United States*, 362 U.S. 217 ... 50-51, 54, 75

Bellis v. *United States*, 417 U.S. 85 ... 67

Berger v. *New York*, 388 U.S. 41 ... 65

Bivens v. *Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 ... 80

Boyd v. *United States*, 116 U.S. 616 ... 17, 30, 32, 33, 36, 59

Bull v. *United States*, 295 U.S. 247 ... 24, 38

Burton v. *Wilkinson*, 18 Vt. (3 Washburn) 186 ... 43

Cady v. *Dombrowski*, 413 U.S. 433 ... 34, 61

Calero-Toledo v. *Pearson Yacht Leasing Co.*, 416 U.S. 663 ... 36

Cases—Continued Page

Camara v. *Municipal Court*, 387 U.S. 523 ... 61, 66, 67, 68

Camden County Beverage Co. v. *Blair*, 46 F.2d 648 ... 38

Cancino v. *United States*, 451 F.2d 1028 ... 78

Cardwell v. *Lewis*, 417 U.S. 583 ... 34

Carlo v. *United States*, 286 F.2d 841, certiorari denied, 366 U.S. 944 ... 78

Carroll v. *United States*, 267 U.S. 132 ... 34

Centracchio v. *Garrity*, 198 F.2d 382, certiorari denied, 344 U.S. 866 ... 79

Chakejian v. *Trout*, 295 F. Supp. 97 ... 79

Chambers v. *Maroney*, 399 U.S. 42 ... 34

Cheatham v. *United States*, 92 U.S. 85 ... 38

Colonnade Catering Corp. v. *United States*, 397 U.S. 72 ... 69, 70, 71

Commissioner v. *Shapiro*, No. 74-744, decided March 8, 1976 ... 39

Coolidge v. *New Hampshire*, 403 U.S. 443 ... 32, 64, 67

Cooper v. *California*, 386 U.S. 58 ... 34

Crosby v. *United States*, 496 F. 2d 1384 ... 38

Curtis v. *Hubbard*, 4 Hill 437 (N.Y. Sup. Ct.) ... 43

Davidson v. *New Orleans*, 96 U.S. 97 ... 34

Davis v. *United States*, 328 U.S. 582 ... 36, 75

Enochs v. *Williams Packing Co.*, 370 U.S. 1 ... 39

Entick v. *Carrington*, 19 Howell's State Trials 1029 ... 33

Erskine v. *Hohnbach*, 14 Wall. 613 ... 33

Field v. *United States*, 263 F.2d 758, certiorari denied, 360 U.S. 918 ... 78

French v. *Barber Asphalt Paving Co.*, 181 U.S. 324 ... 34

Cases—Continued

	Page
Fuentes v. *Shevin*, 407 U.S. 67	39
Ginsberg v. *United States*, 408 F.2d 1016	78
Goldstein v. *United States*, 316 U.S. 114	
Graham v. *duPont*, 262 U.S. 234	38
Griffiths v. *Commissioner*, 308 U.S. 355	25
Groves v. *Bloxom*, 3 Houst. 544 (Del. Super. Ct.)	43
Haffin v. *Mason*, 15 Wall. 671	33
Haggerty v. *Wilber*, 16 Johns. 286, 8 Am. Dec. 321 (N.Y.)	43
Hale v. *Henkel*, 201 U.S. 43	67
Higgins v. *Smith*, 308 U.S. 473	25
Hill v. *United States*, 346 F.2d 175	79
Hodder v. *Williams*, [1895] 2 Q.B. 663	43
Hogan v. *Ingle*, 12 Fed. Cas. 311 (No. 6,583) (C.C. D.C.)	38
Hooker v. *Smith*, 19 Vt. (4 Washburn) 151	43
Hunsucker v. *Phinney*, 497 F.2d 29, certiorari denied, 420 U.S. 927	79
Johnson v. *United States*, 333 U.S. 10	32, 64
Keith v. *Johnson*, 31 Ky. (1 Dana) 604	42, 43
King, The v. *Ford*, 4 Nev. and Manning 451 (K.B., 1835)	42
Laing v. *United States*, No. 73-1808, decided January 13, 1976	24, 39
Leigh v. *Green*, 193 U.S. 79	34
Marron v. *United States*, 275 U.S. 192	65
Mason v. *Rollins*, 16 Fed. Cas. 1061 (No. 9,252) (C.C. N.D. Ill.)	38
Meador, In re, 16 Fed. Cas. 1294 (No. 9,375) (N.D. Ga.)	38
Meister v. *United States*, 397 F.2d 268	79

Cases—Continued

	Page
Miller v. *United States*, 357 U.S. 301	43, 75
Mitchell v. *W. T. Grant Co.*, 416 U.S. 600	39
Murray's Lessee v. *Hoboken Land and Improvement Co.*, 18 How. 272	17, 30, 32, 34, 38, 40, 41, 48, 53, 81
New Hampshire Fire Insurance Co. v. *Scanlon*, 362 U.S. 404	34, 39
O'Reilly v. *United States*, 486 F. 2d 208, certiorari denied, 414 U.S. 1043	37
Palmer v. *McMahon*, 133 U.S. 660	34, 41
Paxton's Case, Massachusetts Reports (Quincy) 51	56
Penton v. *Brown*, 1 Keble 698, 83 Eng. Rep. 1193	43
Phelps v. *United States*, 421 U.S. 330	22, 33
Phillips v. *Commissioner*, 283 U.S. 589	38-39, 40
Plisco v. *United States*, 306 F. 2d 784, certiorari denied, 371 U.S. 948	38
Preston v. *United States*, 376 U.S. 364	61
Psaty v. *United States*, 442 F. 2d 1154	38
Reading v. *Chew*, 3 Gt. Br. Tax Cas. 625	42
Roberts v. *United States*, 363 F. Supp. 37	79
Sabbath v. *United States*, 391 U.S. 585	75
Sandnes' Sons, Inc. v. *United States*, 462 F.2d 1388	39
Scheuer v. *Rhodes*, 416 U.S. 232	80
Schmerber v. *California*, 384 U.S. 757	61
Scottish Union and National Insurance Company v. *Bowland*, 196 U.S. 611	34
See v. *City of Seattle*, 387 U.S. 541	66, 67, 73
Semayne's Case, 3 Coke's Rep. (Fraser ed.), Part V, fol. 91a, 77 Eng. Rep. 194 (K.B., 1604)	42, 43, 75

Cases—Continued

	Page
Springer v. *United States*, 102 U.S. 586	34
State v. *Marshall*, 100 Miss. 626, 56 So. 792	38
State Railroad Tax Cases, 92 U.S. 575	38
State ex rel. McPherson v. *Beckner*, 132 Ind. 371, 31 N.E. 950	43
Sutton v. *Allison*, 47 N.C. (2 Jones Law) 339	43
Syndacker v. *Brosse*, 51 Ill. 357	42, 43
United States v. *Aetna Life Ins. Co.*, 46 F. Supp. 30	71
United States v. *Bisceglia*, 420 U.S. 141	22, 23
United States v. *Biswell*, 406 U.S. 311	33, 69, 71
United States v. *Cooper*, 464 F.2d 648, certiorari denied, 409 U.S. 1107	3
United States v. *Di Re*, 332 U.S. 581	55
United States v. *Heck*, 499 F.2d 778	39
United States v. *Hess*, 26 Fed. Cas. 295 (No. 15,358) (C.C. D. Ore.)	33
United States v. *Lewis*, 385 U.S. 206	67
United States v. *McCormick*, 502 F. 2d 281	37
United States v. *McKinnon*, 426 F. 2d 845, certiorari denied, 400 U.S. 868	37
United States v. *Plastic Electro-Finishing Corp.*, 313 F. Supp. 330, affirmed *per curiam*, C.A. 2, No. 35,227, March 23, 1971	25
United States v. *Rexach*, 482 F. 2d 10, certiorari denied, 414 U.S. 1039	38
United States v. *Stout*, 434 F. 2d 1264	37
United States v. *Troiano*, 365 F. 2d 416, certiorari denied, 385 U.S. 958	37

Cases—Continued

	Page
United States v. *Trotta*, 401 F. 2d 514, certiorari denied *sub nom. Genovese* v. *United States*, 394 U.S. 908	37
United States v. *Watson*, No. 74-538, decided January 26, 1976	51, 54
United States v. *White*, 488 F. 2d 563	37
Vanden Bogert v. *May*, 334 Mich. 606, 55 N.W.2d 115	42
Warden v. *Hayden*, 387 U.S. 294	61
Welsh v. *United States*, 220 F.2d 200	78
Wyman v. *James*, 400 U.S. 309	65
Yazoo & M.V.R.R. Co. v. *Clarksdale*, 257 U.S. 10	32

Constitutions and statutes:

Constitution of the United States:	
Article I, Section 8	2, 49, 1a
Fourth Amendment	*passim*, 1a
Constitution of Massachusetts — 1780, Declaration of Rights, Article XIV	44
Constitution of Pennsylvania—1776, Declaration of Rights, Article X	46
Act of July 31, 1789, c. 5, 1 Stat. 29 *et seq.*:	
Secs. 12, 26, 27	50
Sec. 24	53
Act of August 4, 1790, c. 35, Secs. 27, 28, 50, 1 Stat. 145, 163-164, 170	50
Act of March 3, 1791, c. 15, Sec. 23, 1 Stat. 199, 204	50
Act of July 14, 1798, c. 75, Sec. 9, 1 Stat. 597, 600	51
Act of July 1, 1862, c. 119, Secs. 19-22,	

Constitution and statutes—Continued	Page
Act of July 22, 1813, c. 16, Secs. 21, 22, 3 Stat. 22, 30-31	51
Act of December 21, 1814, c. 15, Sec. 5, 3 Stat. 152, 154	51
Act of January 9, 1815, c. 21, Sec. 26, 3 Stat. 164, 173	51
Act of January 18, 1815, c. 22, Sec. 5, 3 Stat. 180, 182-183	51
Act of January 18, 1815, c. 23, Sec. 9, 3 Stat. 186, 188-189	51
Act of December 23, 1817, c. 1, Sec. 1, 3 Stat. 401	51
Act of August 5, 1861, c. 45, Secs. 35, 36, 12 Stat. 292, 303-304	51
Act of July 1, 1862, c. 119, 12 Stat. 432 *et seq.*:	
Sec. 2-19	51
Secs. 19-22	51
Act of June 30, 1864, c. 173, Secs. 28-31, 13 Stat. 223, 232-236	51
Act of March 3, 1865, c. 78, 13 Stat. 469, 470-471	51
Act of July 13, 1866, c. 184, 14 Stat. 98, 106-109	51
Internal Revenue Code of 1939 (26 U.S.C., 1952 ed.), Sec. 3690	52
Internal Revenue Code of 1954 (26 U.S.C.):	
Sec. 6212	2, 1a
Sec. 6213	2, 2a
Sec. 6215	2, 3a
Sec. 6301	2, 3a

Constitution and statutes—Continued	Page
Sec. 6303	2, 3a
Sec. 6321	2, 24, 25, 35, 62, 4a
Sec. 6322	2, 4a
Sec. 6323	3, 5a
Sec. 6323(a)	62, 5a
Sec. 6323(f)	62
Sec. 6331	*passim*, 5a
Sec. 6331(a)	21, 5a
Sec. 6331(b)	21, 52, 6a
Sec. 6332(c)(1)	70
Sec. 6332(c)(2)	70
Sec. 6333	3, 75, 6a
Sec. 6334	65
Sec. 6335	3, 6a
Sec. 6861	3, 7a
Sec. 6861(a)	23, 7a
Sec. 6861(b)	23-24, 7a
Sec. 7342	70
Sec. 7403	3, 8a
Sec. 7403(c)	77
Sec. 7421	39, 69
Sec. 7421(a)	67, 80
Sec. 7426	3, 69, 8a
Sec. 7426(c)	38
Sec. 7602	3, 63, 10a
Sec. 7701(a)(21)	21, 52
Revised Statutes, Section 3187	51
18 U.S.C. 2	3
18 U.S.C. 656	3
An Act for Collecting and Paying Rates or Taxes, Acts and Laws of Connecticut (1784), p. 197:	
pp. 197-204	47
p. 202	45

Constitution and statutes—Continued — Page

An Act to Raise the Supplies for the Year 1782, Secs. LXIII, LXIX, Laws of Maryland (1780-1783), May, 1781, c. IV — 45

Act of 3 October 1730, c. 1, Secs. 12, 13, 2 Acts and Resolves of the Province of Massachusetts, 552-553 — 58

Act of March 16, 1786 (1 Perpetual Laws of Massachusetts (1780-1800):

- Secs. 1, 2 — 44
- Sec. 2 — 44

Act of December 10, 1796, Laws of New Hampshire (December 1796), p. 4 — 45

Act of February 11, 1791, Laws of New Hampshire (1797), pp. 213-214 — 45

Act of March 7, 1788, Sec. II, Laws of New York (1787-1789) (2 Jones & Varick, p. 341 (1789)) — 45

Act for Ascertaining What Property in this State shall be Deemed Taxable Property, The Method of Assessing the Same, and Collecting Public Taxes, Laws of North Carolina (1715-1800), pp. 429, 431 (Iredell, 1791) — 45

Act of March 27, 1782, 2 Pennsylvania Laws (1781-1790), p. 4:

- pp. 5-8, 10-12, Secs. III, IV, VII, VIII, XIX, XXII, XXIII — 47
- p. 12, Sec. XXIV — 46

Act of April 5, 1785, 2 Pennsylvania Laws (1781-1790), p. 306:

- p. 307, Sec. II — 47

Constitution and statutes—Continued — Page

Act of February 27, 1788, 5 Stat., South Carolina (1839 ed.), No. 1383:

- pp. 52-53 — 45
- pp. 50-57 — 47

Act Empowering Collectors to Collect Rates, Vermont State Papers and Laws (1779-1786), pp. 312-313 — 45

Act of October 17, 1797, c. 25, 1797 Vermont Laws Revised, pp. 335-346 — 45, 47

Act for Raising a Supply of Money for Public Exigencies, 9 Hening's Virginia Statutes (1775-1778), p. 358 (October 1777) — 45

Magna Carta, Chapter VIII — 41

7 Geo. III, c. 46, Sec. 10 (Townshend Act) — 55

38 Geo. III, c. 5, Sec. 17 — 42-43

33 Hen. VIII, c. 39 — 42

51 Hen. III, Stat. 4 — 41

Miscellaneous:

Adams, Charles Francis, *The Works of John Adams*, Vol. 2 (1850) — 55, 56, 57

ALI, Restatement of the Law of Torts 2d, § 208 (1965) — 43, 75

1 Annals of Congress 438 (1834 ed.) — 59

Articles of Confederation, Article VIII — 49

II Coke, *Institutes* (1797 ed.) — 41

Federal Rules of Criminal Procedure:

- Rule 41 — 79
- Rule 41(e) — 79

Miscellaneous—Continued

	Page
The Federalist (Cooke ed. 1961):	
No. 15	49
No. 21	49
No. 23	49
No. 30	49
No. 31	50
No. 33	49
No. 83	50
Gilbert, *An Historical View of the Court of Exchequer* (1738)	42
12 Halsbury's *Laws of England* (3d ed. 1955), *Distress*, pp. 196-198, Nos. 363-369	43
H.R. Rep. No. 1337, 83d Cong., 2d Sess. (1954)	52
H.R. Rep. No. 1884, 89th Cong., 2d Sess. (1966)	71
Internal Revenue Service Manual § 5341	11a
Manual Supplement 53G-39	14a
Landynski, *Search and Seizure and the Supreme Court* (1966)	44, 48, 56
Lasson, *The History and Development of the Fourth Amendment* (1937)	46, 48, 55, 56, 57
Price, *Treatise on the Law of the Exchequer* (1830)	42
S. Rep. No. 52, 69th Cong., 1st Sess. (1926)	71
S. Rep. No. 1622, 83d Cong., 2d Sess. (1954)	52
Taylor, *Two Studies in Constitutional Interpretation* (1969)	48, 55

Miscellaneous—Continued

	Page
The 13th Yearbook of Edward IV (1461-1483)	43
Treasury Regulations on Procedure and Administration, Section 301.6331-1(a)(1), 26 C.F.R. 301.6331(a)(1)	22
Wroth and Zobel, eds., *Legal Papers of John Adams*, Vol. 2 (1965)	55, 56, 57, 58

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-235

G. M. LEASING CORP., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The findings of fact and conclusions of law of the district court (Pet. App. A-14 to A-21) are not reported. The opinion of the court of appeals (Pet. App. A-1 to A-14) is reported at 514 F.2d 935.

JURISDICTION

The judgment of the court of appeals was entered on May 1, 1975 (Appendix C, *infra*, pp. 16a-17a). On

June 17, 1975, the court denied a petition for rehearing by G. M. Leasing Corporation, and also denied its suggestion of rehearing *en banc* (Appendix D, *infra*, pp. 18a-19a). The petition for a writ of certiorari was filed on August 13, 1975, and was granted on December 15, 1975, with respect to Question 2 (A. 14). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

The grant of certiorari was limited to a single question (A. 14), which we believe is appropriately rephrased in the following two questions:

1. Whether the seizure by Internal Revenue Service agents of automobiles from various open locations and documents from petitioner's business premises pursuant to their authority under 26 U.S.C. 6331 to collect taxes by "levy" upon all of a taxpayer's property, including "distraint and seizure by any means," violated the Fourth Amendment guarantee against unreasonable searches and seizures.

2. Whether petitioner is entitled to the relief it seeks in this case even if either aspect of the seizure violated the Fourth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 8, and the Fourth Amendment to the Constitution, and the pertinent provisions of Sections 6212, 6213, 6215, 6301, 6303, 6321, 6322,

6323, 6331, 6333, 6335, 6861, 7403, 7426, and 7602 of the Internal Revenue Code of 1954 (26 U.S.C.), are set forth at Appendix A, *infra*, pp. 1a-10a.

STATEMENT

1. In January 1971, George I. Norman, Jr., was convicted in the United States District Court for the District of Colorado of aiding and abetting a misapplication of funds from a federally-insured bank, in violation of 18 U.S.C. 2 and 656. He was sentenced to two concurrent two-year terms of imprisonment, and his conviction was affirmed on appeal.[1]

In October, 1972, shortly after the court of appeals affirmed the conviction, Internal Revenue Service Agent Philip Clayton of the Salt Lake City, Utah District was assigned to investigate the tax liabilities of Norman for the years 1970 and 1971 (A. 25, 66).

The audit of Norman was initiated because of the following events: In November 1971, Norman and his wife had filed a joint Form 1040 for the year 1970 on which they indicated that their "estimated" tax liability was $280,000, which was paid at that time. However, Norman set forth no other information on that form with respect to his income or deductions by which the Internal Revenue Service could independently compute his tax liability (Deft. Exs. 4, 11; A. 94, 99).

---

[1] See *United States* v. *Cooper*, 464 F.2d 648 (C.A. 10), certiorari denied, 409 U.S. 1107.

On April 15, 1972, Norman sought and was granted an extension of time to June 19, 1972, within which to file his 1971 return. At the former time, he submitted to the Internal Revenue Service a check for $405,125 in payment of his estimated 1971 tax liability. That check, however, was dishonored. Although the Internal Revenue Service granted Norman two furth[illegible] extensions of time within which to file his 1971 return, Norman never filed a return for that year (Deft. Ex. 11; A. 103).[2]

Since Norman had filed an almost entirely incomplete Form 1040 for 1970 and no return at all for 1971, Agent Clayton was assigned to investigate his tax liability for those years (A. 25). In conducting his audit, Clayton received no information or cooperation from Norman and therefore had to rely upon third-party sources, including the records of stock brokerage firms (Pet. App. A-2; A. 30, 66-67). In early March 1973, during the audit, and after this Court had denied Norman's petitions for a writ of certiorari (409 U.S. 1107) and for rehearing (410 U.S. 959), Norman failed to surrender to the United States Marshal to begin serving the sentence for his bank fraud conviction. At that time, he became

[2] Although the Certificate of Assessments and Payments for 1971 has an entry which states "Return Filed," the Internal Revenue Service has advised us that Norman in fact filed no return for 1971, as Agent Clayton testified (A. 25, 66). The entry "Return Filed" refers to a document prepared by the Service for the purpose of enabling the computer to record the assessment made against Norman for that year.

a fugitive from justice, and he remains a fugitive to this day (A. 15; Pet. Br. 5).

On March 19, 1973, the Internal Revenue Service determined deficiencies in Norman's tax liability for 1970 and 1971 of $406,099.34 and $545,310.59, respectively.[3] The deficiencies were based solely upon the amount of stock sales that Norman had made through various brokerage houses (A. 30, 67).

Because of the danger to collection of the tax posed by Norman's failure to file returns and by his status as a fugitive from justice, the District Director immediately assessed the deficiencies determined against Norman and his wife, pursuant to his authority under Section 6861 of the Internal Revenue Code of 1954, on the ground that their collection would be jeopardized by delay (Pet. App. A-2; A. 27).

On the following day, March 20, 1973, agents of the Internal Revenue Service visited Norman's personal residence in Salt Lake City to collect the assessed taxes. They informed Mrs. Norman of the jeopardy assessments and requested payment of the tax due. She refused to pay the tax and advised the agents to speak to her attorney, Shirley Jones (A. 56). Pursuant to their authority under Sections 6323 and 6331 of the Code, the agents thereafter filed

[3] The Internal Revenue Service further determined that his wife's tax liability for those two years was $69,265.04 and $84,873.50 (Deft. Exs. 8, 9; A. 95-96). Since the Internal Revenue Service seized the assets held in the name of petitioner G. M. Leasing Corporation on the ground that it was the alter ego of George I. Norman, Jr., the deficiencies against his wife are not at issue in this case.

notices of tax liens with the Salt Lake County Recorder's Office (Deft. Exs. 8, 9; A. 95-96) and levied on one of Norman's bank accounts (A. 58).

While they were at Norman's residence, the revenue agents observed several automobiles parked in the driveway. Their subsequent check with the state motor vehicle department revealed that these automobiles were registered in the name of petitioner G. M. Leasing Corporation and of another corporation owned by Norman. However, there were no automobiles registered in Norman's name or that of his wife (Pet. App. A-2; A. 57, 73).

2. Once the jeopardy assessments were issued and Mrs. Norman refused to pay the tax, the case was assigned to revenue officers who are responsible for collection of delinquent accounts (A. 70-71). On March 21, 1973, the revenue officers met to discuss the assessments against the Normans and the status and activity of petitioner G.M. Leasing Corporation. It was pointed out that petitioner had no license to conduct business within Salt Lake County and that it had no telephone listing (A. 74).

Although petitioner had filed a status report with the Utah Department of Employment Security that indicated that its principal business activity was "Leasing Luxury Automobiles, Boats, etc.," it had no employees during 1972 or the first quarter of 1973 (Deft. Ex. 2; A. 92). On its Utah sales tax return for the second quarter of 1972, petitioner reported no sales (Deft. Ex. 3; A. 93). While a number of valuable luxury and antique automobiles were

registered in petitioner's name, none of them was of the type that would normally be used in a leasing business. Some of these automobiles were parked at Norman's residence, which suggested that his family used them for personal purposes (A. 74).

These facts indicated to the revenue officers that petitioner was not engaged in any business activity but was an alter ego of Norman and served as a repository of at least some of his personal assets. The revenue officers thereupon consulted with the Regional Counsel of the Internal Revenue Service and described to him the facts they had discovered with respect to petitioner's status. With the concurrence of the Regional Counsel, the revenue officers concluded that the assets of petitioner actually belonged to Norman and determined to take such enforcement action as appeared necessary to protect the government's interests. They decided to levy upon and seize the automobiles titled in petitioner's name in partial satisfaction of the tax assessments against Norman (A. 75-76).

On or about March 21, 1973, the revenue officers seized several automobiles, including a 1972 Stutz, a Rolls Royce Phantom V, a 1930 Rolls Royce Phantom, two 1971 Stutzes, and a Jaguar. The first three were seized from two different locations in Salt Lake City, the next two were seized from a parking lot in Los Angeles, California, and the last automobile was seized from the vicinity of Norman's personal residence (A. 58, 121). These cars were registered in the name of petitioner (A. 75-76). The revenue

officers left a Chevrolet and a station wagon for the personal use of Mrs. Norman and her family (A. 58).[4]

On March 21, 1973, two Internal Revenue collection officers went to petitioner's office at 4751-4753 Holladay Boulevard in Salt Lake County for the purpose of levying on property subject to seizure, including the building itself (Pet. App. A-3; A. 19). The agents had learned that one or two additional valuable automobiles were located at these premises, which consisted of a cottage-type building and garage to which Real Estate, Incorporated, another corporation of Norman's, held title (A. 77). After they arrived, the officers determined that there was a car in the garage and telephoned their superior, Bert Applegate, requesting him to come out and give them some assistance (A. 19-20, 77-79).

Applegate took two other revenue officers with him and went to the premises. Upon Applegate's arrival, he observed that there was a locksmith on the scene and learned that he had just removed

[4] As of March 1973, there were seven automobiles registered in petitioner's name: a two-door blue Stutz, a two-door tan Stutz, a four-door burgundy Stutz, a two-door burgundy Stutz, a 1965 Rolls Royce limousine, a 1929 Rolls Royce Phantom I, and a 1972 Jaguar sedan. The two-door tan Stutz (valued at $30,000) and the four-door burgundy Stutz (valued at $100,000) were financed with loans from Murray First Thrift, a finance company. Following the tax levy, the finance company foreclosed its liens and arranged with Norman's attorney and one of his associates for the sale of the two automobiles (A. 33, 110, 122). The government did not participate in these transactions and did not receive any portion of the sales proceeds.

the lock from the garage door at the direction of the revenue officers. Inside the garage was a Stutz automobile. Applegate also observed that the locksmith had removed the lock on the back door of the cottage (A. 19-20, 77-79).

The outward appearance of the Holladay Boulevard cottage was such that it could have been a personal residence. After Applegate entered the cottage, he observed that there was a room with a stove and a refrigerator, which suggested that the cottage might have been used as a personal residence. Although the revenue officers stated that they were sure the cottage was not a personal residence, Applegate instructed them not to proceed with the seizure of any property until the status of the cottage could be confirmed (A. 23-24, 80-81).

Applegate took this precautionary action because the Internal Revenue Service does not, as a matter of policy, seize personal residences by means of forced entry without the consent of the occupant (see Appendix B, *infra*, pp. 11a-12a). Thus, after remaining in the cottage for three or four minutes, the collection officers left without taking anything (A. 23-24, 80-81). When Applegate instructed the collection officers that no seizures were to be made, they restored the locks on the doors to their original condition (A. 82).

While the collection officers were in the cottage, Norman's son, George I. Norman, III, arrived there. After learning that the revenue officers had decided to seize the Stutz automobile, he told them that it

did not belong to his father but to petitioner. At this point, the officers decided not to seize the automobile. Applegate asked Norman's son to provide him with some information concerning the ownership of the Stutz so that they could determine whether to seize it (A. 79-80).

In the interim, the Service's investigation turned up additional evidence in support of the original determination that the cottage was a place of business and not a personal residence (A. 62-63). Specifically, a Mr. Redd, who served as a contractor for Norman, told Agent Applegate that the cottage was the place where Norman carried on much of his business (A. 79).

During the evening and throughout the night following their March 21 visit to petitioner's premises, Internal Revenue agents observed that the lights were on in the cottage and there was a good deal of activity there. Various persons were seen removing boxes of unknown material from the cottage. Moreover, the next morning, the agents observed that the Stutz automobile had disappeared from the garage (A. 83).

Because these events indicated that unknown persons were putting property believed to belong to Norman beyond the reach of the Internal Revenue Service, the collection officers decided to seize the cottage, its furnishings and any other remaining assets that could be found there (A. 83). On March 23, 1973, the revenue officers returned to petitioner's cottage-office for the purpose of seizing it and its

contents.[5] Prior to this seizure, all of the Internal Revenue Service agents who had any connection with the investigation of Norman's tax liability and the collection of the outstanding assessments discussed the case at great length. At that time, the agents again discussed the propriety of a second seizure with the Regional Counsel of the Internal Revenue Service (A. 82-84).

The seizure was carried out with the assistance of locksmiths and personnel and equipment of a private van and storage firm. The revenue agents packed and removed all of the remaining contents of the cottage, including furnishings and books and records. In accordance with their statutory duty under Section 6335 of the Code, the agents made an inventory of the property seized from the cottage (A. 84).

The revenue agents hoped to be able to examine the books and records in order to see if they contained any assets such as stock certificates and to seek information concerning the location of other assets. However, the Regional Counsel instructed the agents not to examine the books and records but to pack them in sealed boxes and remove them to a safe storage place (A. 84-85). This procedure was followed because the cottage had been broken into once before

---

[5] The cottage itself was seized as part of a levy on Real Estate, Inc., another corporation which the Service determined to be an alter ego of Norman (Deft. Ex. 10; A. 97). That corporation is not a party to this suit, and the relief petitioner requests does not include the return of the cottage building (see A. 123-124). Moreover, petitioner has not requested return of the furnishings that were seized from its business premises.

and it was deemed unwise to leave anything of value in an unattended building (Pet. App. A-3; A. 88-89).

During the seizure of the cottage and its contents, Shirley Jones, a lawyer who had performed services for Norman,[6] arrived on the scene. He telephoned the Office of the Regional Counsel of the Service and was told by Richard Brennan of that office that the books and records were being seized because they might contain cash or stock certificates. Brennan invited Jones to come to the Internal Revenue Service and examine the files with the agents. However, Jones declined to do so because he had no authority to act as attorney for petitioner and had told Norman by telephone that he would not represent him unless he surrendered himself (A. 47).

3. On May 3, 1973, petitioner instituted this suit in the United States District Court for the District of Utah. Its amended complaint, filed on June 5, 1973, asserted three causes of action: (1) a claim for wrongful levy under Section 7426 of the Internal Revenue Code, seeking return of the seized automobiles; (2) a claim for suppression of evidence obtained from the seized documents under Rule 41 of the Federal Rules of Criminal Procedure; and (3) a claim against the individual revenue agents for damages (A. 105-111).

Shortly after the commencement of this action, the Internal Revenue Service returned to the Norman

[6] Jones had represented Norman in the criminal bank fraud case (see 464 F.2d at 649) and in the formation of petitioner (A. 43).

residence the originals of the documents seized from petitioner's cottage-office (A. 122). Prior to returning them, however, Agent Clayton unsealed the boxes in which the records were stored and photocopied them at the request of the Regional Counsel (Pet. App. A-3; A. 29-30). The only items of the documents seized that pertained to petitioner were a few papers relating to the ownership of the automobiles and one bank statement containing a few checks (A. 30-31).

In a second amended complaint, petitioner alleged, *inter alia*, that the tax assessments and the issuance of jeopardy tax assessments against Norman were arbitrary and capricious, that it was not an alter ego of Norman, and that the levy upon its premises and the contents thereof violated the Fourth Amendment (Pet. App. A-3 to A-4; A. 119-121).[7] The complaint requested, as relief, the return or destruction of the photocopies of the seized documents; return of the automobiles levied upon and seized and an order forever barring the government from seizing them; suppression of evidence obtained from the seized documents and an order forever barring the government

[7] Norman's son, George I. Norman, III, filed a complaint in intervention alleging the same facts and requesting essentially the same relief (A. 112-116). The district court permitted him to intervene (A. 9).

from obtaining such evidence by any means; release of all levies; a declaration that petitioner was not an alter ego of George I. Norman, Jr.; and general and punitive damages of $525,000 against the individual revenue agents as compensation for the invasion of its constitutional rights (A. 123-124). In response, the government filed a counterclaim, seeking an order that the federal tax liens attaching to Norman's property be foreclosed against the property held in the name of petitioner (A. 127-134).

A trial was held before Judge Willis W. Ritter. At the trial, the revenue agents, George I. Norman, III, and various other persons connected with Norman testified. The evidence established that Norman originally held title to some of the automobiles registered in the name of petitioner (A. 37), that petitioner had no employees and did not lease any cars (A. 39), that petitioner was organized in April 1972 but the cars were not transferred to it until the end of 1972, and that petitioner never issued any stock, held any directors' meetings, or engaged in any business (Pet. App. A-6 to A-8; A. 43-45).

The district court entered judgment for petitioner and intervenor George I. Norman, III. It held: (1) that named employees of the Internal Revenue Service committed an illegal search and seizure of petitioner's offices, which it found also to be intervenor's residence, in violation of the Fourth Amendment and that the photocopies of the seized books and records in the possession of the Internal Revenue Service

should be destroyed because any use of them would be illegal; (2) that petitioner and intervenor were entitled to general and punitive damages in an indeterminate amount; (3) that the government's counterclaim should be dismissed with prejudice; and (4) that the Internal Revenue Service should return all of the seized automobiles of petitioner and assets of the intervenor[8] and pay petitioner for the value of the two automobiles it had allegedly sold (Pet. App. A-20 to A-21).

4. The court of appeals unanimously reversed (Pet. App. A-1 to A-14). It held that the evidence established beyond question that petitioner was the alter ego of Norman and that the district court's contrary finding was clearly erroneous (Pet. App. A-5 to A-8). It further held (Pet. App. A-8 to A-9) that the trial court erred in failing to make independent findings of fact or conclusions of law but simply accepting those prepared by petitioner. As the court of appeals stated, "[t]his practice of the same trial judge has been twice condemned. See *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651, * * *; *Kelson* v. *United States*, [503 F.2d 1291 (C.A. 10)]" (Pet. App. A-9).

The court of appeals also ruled that the district court erred in holding that petitioner's documents and automobiles were illegally seized and in ordering the return of the automobiles and the suppression of

---

[8] The Service also had levied on and seized 7,143 shares of stock of Emdeko International, Inc. held by George I. Norman, III. See nn. 10, 13, *infra*.

the documents. After observing that there was no evidence in the record to support the trial court's finding (No. 10, Pet. App. A-16) that the behavior of one of the revenue agents was malicious, the court concluded that the Internal Revenue Service conducted a statutorily valid tax levy authorized by 26 U.S.C. 6331. In the court of appeals' view, the revenue agents were acting pursuant to statute and did not make an illegal search (Pet. App. A-9 to A-10).

The court of appeals also reversed the trial court's judgment insofar as it had awarded petitioner and intervenor money damages against the revenue agents, and had ordered return of the assets levied upon and removal of all levies and liens. The court also held that use of photocopies of the seized books and records would not be illegal[9] (Pet. App. A-13 to A-14).

Finally, the court of appeals concluded that petitioner had not met its burden of proving that the assessments against Norman were erroneous. Accordingly, it held that the trial court erred in invalidating the assessments and in dismissing the government's counterclaim[10] (Pet. App. A-10 to A-12).

---

[9] This aspect of the court's holding appears to be moot. We are advised by the Internal Revenue Service that while the case was pending on appeal it voluntarily destroyed all existing photocopies of the seized books and records that were in its possession. To the best of the Service's knowledge, there are no other remaining photocopies.

[10] In accordance with the government's concession, the court of appeals affirmed the trial court only with respect to its order for the return of 7,000 shares of Emdeko stock to intervenor George I. Norman, III. However, the court of appeals held that the remaining 143 shares were properly levied upon as Norman's assets (Pet. App. A-13).

SUMMARY OF ARGUMENT

1. This case involves the constitutional validity under the Fourth Amendment of warrantless seizures of property by the Internal Revenue Service pursuant to its longstanding statutory authority (26 U.S.C. 6331) to levy upon the assets of a delinquent taxpayer to satisfy unpaid tax assessments. The property in question consisted of automobiles seized from open locations and documents seized from petitioner's business premises after a forcible entry.

Two decisions of this Court—*Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 18 How. 272, and *Boyd* v. *United States*, 116 U.S. 616—support the constitutionality of the warrantless seizure of a delinquent taxpayer's property. Thus, under well-settled principles, the agents' warrantless seizure of automobiles from non-private locations did not violate the Fourth Amendment.

In *Murray's Lessee*, the Court ruled that a distress warrant issued by the Treasury which empowered the government to seize a debtor's land without a judicial warrant did not violate the Fourth Amendment. *Boyd* v. *United States*, *supra*, reaffirmed this principle. There, the Court stated that a non-investigatory summary seizure of goods forfeited for a breach of the revenue laws was not "unreasonable"

within the meaning of the Fourth Amendment, observing that such seizures were authorized by English statutes for at least two centuries and by the revenue acts from the beginnings of the Republic. The privacy interests at stake in such a tax seizure are sufficiently small so as not to require antecedent judicial approval. This proposition is confirmed by the numerous decisions of this Court in other areas of the law upholding warrantless forfeitures as well as warrantless investigatory searches and seizures of automobiles.

2. It may not be necessary for the Court to reach the question of the seizure of the documents because petitioner would not be entitled to the relief it seeks with respect to the documents however the Fourth Amendment issue is decided. Its claims for return of the documents, destruction of photocopies, and suppression, are either moot or premature. Moreover, its claims for damages are unsupported by any proof of injury and are refuted by the good faith conduct of the agents.

At all events, the warrantless seizure of the documents from petitioner's business premises did not violate the Fourth Amendment. The common law practice and early statutes antedating the Fourth Amendment, as well as the history of the adoption of that constitutional provision, confirm the correctness of the court of appeals' conclusion that the Fourth Amendment was not intended to prohibit the type of warrantless seizure of property from the business premises of a delinquent taxpayer that occurred in this case. A series of English statutes which

date back to the thirteenth century established the right of the sovereign to seize the property of its debtors. It was likewise well established that officers could forcibly enter nonresidential buildings to collect debts due to the Crown.

Warrantless seizures of a taxpayer's property to collect taxes also were authorized by various revenue statutes enacted in America prior to the ratification of the Constitution. Significantly, these statutes existed in each of the original States that had adopted a prohibition against unreasonable searches and seizures in its declaration of rights—prohibitions that were the historical antecedents of the Fourth Amendment. Thus, these early statutes reflect the understanding that the common law procedures permitting seizure of property to collect taxes without a judicial warrant did not violate the constitutional prohibition against unreasonable searches and seizures that was soon to be formally adopted as the Fourth Amendment.

The Framers of the Constitution likewise saw no inconsistency between the guarantee of the Fourth Amendment and the statutory authority of the Treasury to collect taxes by summary means. From the very beginnings of the Republic, the statutory power of seizure now set forth in Section 6331 of the current Code was regarded as a necessary and proper exercise of the Congressional taxing power. Thus, the First Congress, which also proposed adoption of the Bill of Rights, and every subsequent Congress provided that taxes could be levied by distraint and

seizure. The views of the early Congresses constitute particularly persuasive authority regarding the types of searches and seizures that were barred by the Fourth Amendment.

3. Assuming that the absence of a judicial warrant did not violate the Fourth Amendment, the conduct of the revenue agents in executing the levy and seizure complied with the procedures contemplated by Section 6331 and was therefore reasonable. With respect to the automobiles that were seized from various open places without any forcible entry, the reasonableness of the agents' actions is well established.

The agents' conduct with respect to the seizure of the contents of petitioner's business premises likewise met the requirements of the Fourth Amendment. In enacting the levy and seizure statute, Congress provided a mechanism by which the Treasury could enforce collection against recalcitrant taxpayers. Congress did not intend this procedure to be frustrated if the taxpayer placed all of his property behind locked doors. Thus, Congress must have intended that a reasonable degree of force could be constitutionally employed to gain access to a delinquent taxpayer's private business premises where necessary to accomplish a seizure of his property to collect taxes he owes.

ARGUMENT

I. The Warrantless Seizure By The Secretary Of The Treasury Of Property Of A Delinquent Taxpayer, Pursuant To Levy Under Section 6331(a) Of The Internal Revenue Code, Does Not Violate The Fourth Amendment

A. *Introduction*

1. This case involves the constitutional validity of seizures of property by the Internal Revenue Service pursuant to its longstanding statutory power to levy upon the assets of a delinquent taxpayer to satisfy unpaid tax assessments. Section 6331(a) of the Internal Revenue Code of 1954 (Appendix A, *infra*) authorizes the Secretary of the Treasury or his delegate, the Commissioner of Internal Revenue, to collect taxes "by levy upon all property and rights to property" belonging to a person who neglects or refuses to pay any tax or "on which there is a lien * * * for the payment of such tax." Section 6331(b) defines the term "levy" as including "the power of distraint and seizure by any means." See also Section 7701(a)(21) of the Code.

Both tangible and intangible property are subject to levy. Section 6331(b) of the Code makes this explicit by providing that the government may, in the exercise of its levy power, "seize and sell * * * property or rights to property (whether real or personal, tangible or intangible)." Levy upon tangible property normally is effected by service of a Levy (Form 668-B) or Notice of Levy (Form 668-A) and phys-

ical seizure of the property.[11] Where physical seizure is not feasible or necessary, the property is posted or tagged in a manner that indicates that it has been taken into the government's custody. Since intangible property is not susceptible to physical seizure, posting, or tagging, levy upon intangible property is effected by serving the appropriate form upon the person holding the property or rights to property: "[l]evy may be made by serving a notice of levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy including receivables, bank accounts, evidences of debt, securities, and accrued salaries, wages, commissions, and other compensation." Section 301.6331-1(a)(1) of the Treasury Regulations on Procedure and Administration, 26 C.F.R. 301.6331-1(a)(1). See *Phelps* v. *United States*, 421 U.S. 330, 335-337. Thus, the statute permits the summary collection of taxes from persons who by their actions have demonstrated their refusal to meet their tax obligations on a voluntary basis.

The Court has recognized that the Internal Revenue Service sometimes is required to exert compulsion in enforcing the revenue laws. As the Court observed in *United States* v. *Bisceglia*, 420 U.S. 141, 145, "our tax structure is based on a system of self-reporting. There is legal compulsion, to be sure, but

[11] The Levy is served upon the taxpayer; the Notice of Levy is served upon third persons. When service is made upon a third person, a copy of the Notice of Levy is furnished to the taxpayer.

basically the Government depends upon the good faith and integrity of each potential taxpayer to disclose honestly all information relevant to tax liability. Nonetheless, it would be naive to ignore the reality that some persons attempt to outwit the system * * *."

While *Bisceglia* involved the Internal Revenue Service's power to exercise compulsion to ascertain the identity of a potential tax evader, the Court's observation is equally appropriate here, where the taxpayer's "attempt to outwit the system" consisted of failing to file returns, refusing to cooperate with an audit, and seeking to defeat collection by concealing some of his assets in a sham corporation such as petitioner. After the audit of Norman resulted in substantial deficiencies based upon his stock brokerage account records, Norman became and still is a fugitive from justice arising out of his federal conviction for misapplication of bank funds. Because of the danger to collection posed by Norman's fugitive status, the District Director authorized the issuance of jeopardy assessments under Section 6861(a) of the Code.[12]

[12] By allowing an immediate assessment, Section 6861(a) provides an exception to the general rule barring an assessment until the taxpayer has received a notice of deficiency and has been given an opportunity to file a petition in the Tax Court. Within 60 days after the jeopardy assessment, Section

The Service exercises its levy power when a taxpayer's liability remains unpaid after assessment and demand for payment. But its ability to seize the property of delinquent or recalcitrant taxpayers such as Norman is vital to the successful functioning of the tax system. Apart from the fact that the effective exercise of the levy power insures that all persons, regardless of the degree of their cooperation with the Service, will satisfy their tax liability, the very existence of the levy power encourages the voluntary compliance upon which our self-assessment tax system depends. If the public believed that non-cooperation with the Internal Revenue Service would result in a lesser degree of collection of tax liabilities, the Service could no longer effectively collect the taxes, which are "the life-blood of government, and their prompt and certain availability an imperious need." *Bull* v. *United States*, 295 U.S. 247, 259.

2. Under Section 6321 of the Code, the outstanding assessments were a lien in favor of the United States upon all property belonging to Norman. The Service subsequently determined that the petitioner corporation was the repository of the personal assets

---

6861(b) requires the District Director to send the taxpayer a notice of deficiency, which enables the taxpayer to file a petition with the Tax Court for a redetermination of the deficiency. See *Laing* v. *United States*, No. 73-1808, decided January 13, 1976, slip op. 8-9. We are advised by the Internal Revenue Service that it sent Norman a notice of deficiency within the prescribed period, and that Norman thereupon filed a petition in the Tax Court, where his case is awaiting trial (No. 6000-73).

of Norman and was his alter ego. If a corporate entity is engaged in no business activity but is only employed as an agent of its shareholder, it is well established that "the maintenance of effective benefit through the interposition of a subservient agency" (*Griffiths* v. *Commissioner*, 308 U.S. 355, 358) will not be given effect for federal tax purposes. Accord: *Higgins* v. *Smith*, 308 U.S. 473, 476. Thus, from the standpoint of the tax statute, petitioner G.M. Leasing Corporation had no independent existence apart from the taxpayer Norman. The Service therefore properly treated petitioner's assets as property of Norman that was subject to lien under Section 6321 of the Code. Since Section 6331 authorizes a levy and seizure of all property of such a person "on which there is a lien * * * for the payment of [delinquent] tax[es]," the Service was empowered to levy upon assets held in petitioner's name in satisfaction of Norman's tax liability. See *United States* v. *Plastic Electro-Finishing Corp.*, 313 F. Supp. 330, 333-334 (E.D.N.Y.), affirmed *per curiam*, No. 35,227, decided March 23, 1971 (C.A. 2).

After observing that various persons had begun to remove boxes of material from petitioner's business premises so that Norman's property located on petitioner's premises was fast disappearing, the Service exercised its Section 6331 power and seized several of Norman's automobiles, to which petitioner had

title, from various open locations and documents from petitioner's premises.[13]

3. The grant of certiorari is limited to the question whether these tax levies and seizures violated the Fourth Amendment guarantee against unreasonable searches and seizures (A. 14).[14] The issue here is not

---

[13] Petitioners are G. M. Leasing Corporation and George I. Norman, III, whom the district court permitted to intervene (A. 9). Unless otherwise indicated, references to "petitioner" are to G. M. Leasing Corporation.

[14] The court of appeals upheld the correctness of both the tax assessments against Norman and the Service's determination that petitioner was a repository of the personal assets and alter ego of Norman (Pet. App. A-5 to A-8, A-11 to A-13), and this Court denied certiorari insofar as the petition sought review of those questions. Hence, petitioner's arguments (Br. 10-11, 29, 30, 32, 36) with respect to these issues are beyond the scope of the grant of certiorari.

Moreover, the claims of petitioner George I. Norman, III, are outside the grant of certiorari. The sole basis of Norman III's complaint in intervention (A. 112-116) was the assertion of an illegal seizure of certain stock belonging to him. But as his complaint alleges, the stock was seized from the stock transfer agent (A. 114) and that collection action had no connection with the seizure of the automobiles from various open locations and the documents from G. M. Leasing's premises which are the subject of the Fourth Amendment claim before the Court. At all events, the government has returned to Norman, III 7,000 of the 7,143 shares of stock seized from him, and the Internal Revenue Service properly levied on the remaining 143 shares (Pet. App. A-13). Norman, III did not appeal with respect to the 143 shares and the government did not appeal with respect to the 7,000 shares. The claims of Norman, III are accordingly no longer at issue.

whether the Fourth Amendment regulates the conduct of revenue agents in their execution of a levy, but the question is whether the Service can levy upon and seize a delinquent taxpayer's property without obtaining a judicial warrant. We submit that the pertinent historical materials demonstrate that the warrant requirement does not apply to such tax seizures. Thus, the Internal Revenue Service's warrantless levy and seizure in this case did not violate the Fourth Amendment.

First, under well-settled principles, the agents' warrantless seizure of various automobiles from what appear to have been public or quasi-public places (such as parking lots and streets) did not violate the Fourth Amendment. If the Service has an outstanding tax assessment against a person, and one of its agents discovers property such as an automobile or any other chattel belonging to that person in an open place, the decisions of this Court have long held that the agent does not need a warrant to seize that property. The privacy interests at stake in such a seizure are sufficiently small as not to require antecedent judicial approval.

It may not be necessary on the facts of this case for the Court to reach the question of the Service's seizure of documents from petitioner's business premises. As we discuss in greater detail in Point II, *infra*, pp. 76-81, petitioner is not entitled to its claimed relief with respect to the documents however the Court decides the Fourth Amendment issues. Since

the Service returned the originals at the commencement of this litigation and thereafter destroyed the photocopies, the first aspect of petitioner's requested relief is moot. Moreover, petitioner's request for a suppression order with respect to evidence obtained from the seized documents is premature because there are no proceedings, either pending or contemplated, in which such evidence would be used by the government. Finally, to the extent that petitioner's claim for damages against the revenue agents is directed against their temporary seizure of its books and related documents, the record contains no proof of injury and establishes the good faith of the agents in conducting the levy. The Court may therefore conclude that it is inappropriate to address petitioner's Fourth Amendment claim with respect to the seizure of the documents.

At all events, it is our submission that the warrantless seizure of the documents from petitioner's business premises did not violate the Fourth Amendment. The privacy values of the Fourth Amendment usually implicate the warrant requirement when there is a governmental intrusion into private premises. But we submit that the warrantless entry by Internal Revenue agents into a delinquent taxpayer's premises for the purpose of searching for and seizing his property reasonably believed to be present therein to satisfy a specific tax debt (especially under circumstances where, as here, the taxpayer's property is about to disappear) is an historical exception to the Fourth Amendment warrant re-

quirement analogous to the warrantless seizure of forfeitable property. As we shall show, the sovereign's right to enter private premises for that purpose was well established both at common law and at the time of the ratification of the Bill of Rights. Thus, the Fourth Amendment did not impose a warrant requirement on this narrow category of seizures but only required that they be "reasonable."

Agents of the Internal Revenue Service are subject to strict guidelines concerning their conduct of levies and seizures. They must ascertain that property about to be seized in fact belongs to the taxpayer. Moreover, they are not permitted to enter personal residences over the objection of the occupant, nor are they permitted to use physical force against any person (see Appendix B, *infra*, pp. 11a-15a). Finally, we are advised that the Internal Revenue Service does not levy upon and seize a taxpayer's books and records for the investigatory purpose of obtaining evidence of civil tax liability or a criminal tax violation. These self-imposed limitations are reflected in the facts of this case, where the agents acted only after receipt of reliable information that petitioner G.M. Leasing Corporation was the alter ego of the delinquent taxpayer, that the cottage was G.M. Leasing's business premises and not a personal residence, and observed that various persons were removing prop-

erty from petitioner's business premises.[15] Under these circumstances, their prompt seizure of the premises and its contents was the only reasonable means of protecting the government's interest in the taxpayer's property.

B. *This Court Has Upheld the Validity Under the Fourth Amendment of Warrantless Seizures of the Property of Delinquent Taxpayers*

1. Two decisions of this Court—*Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 18 How. 272, and *Boyd* v. *United States*, 116 U.S. 616—support the constitutionality of warrantless seizures of the property of delinquent taxpayers such as the automobiles in this case.

a. In *Murray's Lessee*, the Court unanimously held more than a century ago that a "distress warrant" issued by the Treasury, authorizing the seizure of a debtor's land in satisfaction of a claim of the United States, did not violate the Fourth Amendment. The question arose in the context of an action for ejectment brought by a judgment creditor

[15] Although petitioner describes (Br. 11) the premises in question as the personal residence of George I. Norman, III, the record confirms the agents' determination that the building was not a personal residence but was petitioner's business premises (A. 62-63, 79). Contrary to petitioner's characterization of the premises (Br. 11), the fact that Norman, III kept some of his personal property in the building (A. 34-35) did not transform it into his personal residence.

of the debtor against the party who purchased the land at a sale conducted by the United States Marshal. In arguing in support of its title, the plaintiff contended that the distress warrant issued by the Treasury was unconstitutional because it could only be issued by the judiciary, and that the warrant violated the Fourth Amendment because it was not supported by oath or affirmation.

The Court rejected both of the arguments, and ruled (1) that the exercise of executive powers to collect a debt due the government by summary process without resort to the judiciary was not unconstitutional, and (2) that the distress warrant which empowered the government to seize the debtor's land did not violate the judicial warrant requirements of the Fourth Amendment. The Court stated, in terms strikingly appropriate to petitioner's claim (18 How. at 285-286)—

> The remaining objection to this warrant is, that it was issued without the support of an oath or affirmation, and so was forbidden by the fourth article of the amendments of the constitution. *But this article has no reference to civil proceedings for the recovery of debts, of which a search warrant is not made part.* The process, in this case, is termed, in the act of congress, a warrant of distress. The name bestowed upon it cannot affect its constitutional validity. In substance, it is an extent authorizing a levy for the satisfaction of a debt; and as no other authority is conferred, to make searches or seizures, than is ordinarily embraced in every execution issued upon a recognizance,

> or a stipulation in the admiralty, we are of opinion it was not invalid for this cause [emphasis supplied].

The distress warrant and the seizure upheld in *Murray's Lessee* is the precise analogue of the Treasury's current statutory power of "distraint and seizure by any means" which was exercised in this case. The inapplicability of the Fourth Amendment warrant requirements to the Treasury distress warrants of an earlier day and the present Internal Revenue Service levy and seizure rests upon the fact that such warrants, like a sheriff's writ of execution of a judgment on behalf of a private creditor, are issued only to obtain property of the debtor and not to obtain information about him. Thus, while the execution of a tax levy may involve a search and necessarily requires a seizure, such actions in aid of tax collection are analogous to the common law execution by a judgment creditor. *Yazoo & M.V.R.R. Co.* v. *Clarksdale*, 257 U.S. 10, 19. They are not equivalent to the execution of an investigative search warrant which may be issued only by a judicial officer upon probable cause. See, *e.g.*, *Johnson* v. *United States*, 333 U.S. 10, 13-14; *Coolidge* v. *New Hampshire*, 403 U.S. 443, 449-453.

b. *Boyd* v. *United States*, 116 U.S. 616, reaffirmed this principle. Although holding that a person could not be compelled by subpoena to produce documents that might incriminate him, the Court stated that a summary seizure of goods forfeited for a breach of the revenue laws or concealed to avoid the duties payable on them was not "unreasonable" within the

meaning of the Fourth Amendment. As the Court observed, such seizures "[have] been authorized by English statutes for at least two centuries past; and the like seizures have been authorized by our own revenue acts from the commencement of the government" (116 U.S. at 623). See *United States* v. *Biswell*, 406 U.S. 311, 314, n.3. Indeed, the Court distinguished investigatory searches from tax seizures (116 U.S. at 623), which it compared to "[t]he entry upon premises, made by a sheriff or other officer of the law, for the purpose of seizing goods and chattels by virtue of a judicial writ, such as an attachment, a sequestration, or an execution * * *" (*id.* at 624).[16] See, *e.g.*, *Erskine* v. *Hohnbach*, 14 Wall. 613, 617; *Haffin* v. *Mason*, 15 Wall. 671, 675; *United States* v. *Hess*, 26 Fed. Cas. 295 (No. 15,358) (C.C. D. Ore.). See also *Phelps* v. *United States*, *supra*, 421 U.S. at 337.

---

[16] *Entick* v. *Carrington*, 19 Howell's State Trials 1029, cited in *Boyd* (116 U.S. at 626-627) and upon which petitioner relies (Br. 14, 19, 32), similarly recognized an exception for the seizure of property for purposes of tax collection. There, Lord Camden stated (*id.* at 1066):

> The great end, for which men entered into society, was to secure their property. That right is preserved sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole. *The cases where this right of property is set aside by positive law, are various. Distresses, executions, forfeitures, taxes, etc. are all of this description; wherein every man by common consent gives up that right, for the sake of justice and the general good.* [Emphasis supplied.]

2. At least with respect to the seizure of the automobiles, or indeed of any other type of personal property, these two decisions answer petitioner's contentions that the Internal Revenue Service's seizure of the taxpayer's property violated the Fourth Amendment because it was made without a judicial warrant.[17] The Court's decisions in other areas of the law involving investigatory searches of automobiles seized from non-private locations confirm the correctness of this proposition. Although vehicles are "effects" within the meaning of the Fourth Amendment, there is "a constitutional difference between houses and cars" for purposes of the warrant requirement. *Chambers* v. *Maroney*, 399 U.S. 42, 52; *Carroll* v. *United States*, 267 U.S. 132, 153-154; *Cooper* v. *California*, 386 U.S. 58, 59; *Cady* v. *Dombrowski*, *supra*, 413 U.S. at 441. Most recently, in *Cardwell* v. *Lewis*, 417 U.S. 583, a plurality of the Court concluded that

[17] In apparent recognition of the applicability of *Murray's Lessee* to this case, petitioner argues (Br. 18-19) that "it is questionable whether that conclusion was warranted" in light of the history of the Fourth Amendment and in light of *Boyd*. But *Boyd* reinforces the holding in *Murray's Lessee*. Moreover, the Court has consistently cited *Murray's Lessee* with approval. See *Davidson* v. *New Orleans*, 96 U.S. 97, 102, 107; *Springer* v. *United States*, 102 U.S. 586, 594; *Palmer* v. *McMahon*, 133 U.S. 660, 669; *French* v. *Barber Asphalt Paving Co.*, 181 U.S. 324, 329; *Leigh* v. *Green*, 193 U.S. 79, 88; *Scottish Union and National Insurance Company* v. *Bowland*, 196 U.S. 611, 632; *New Hampshire Fire Insurance Co.* v. *Scanlon*, 362 U.S. 404, 408. Finally, as we discuss *infra*, pp. 40-60, the history of the adoption of the Fourth Amendment supports this Court's conclusion that its warrant requirement was not intended to govern tax seizures.

a warrantless examination of the exterior of an automobile seized by the police from a public parking lot on probable cause was reasonable and did not infringe upon the owner's right of privacy that is the core interest protected by the Fourth Amendment.

The constitutional validity of the warrantless seizure of the automobiles in this case follows *a fortiori* from these decisions. Here, the revenue agents' seizure was not accompanied by any investigatory "search" of either the interior or the exterior of the automobiles. While the seizure served to deprive petitioner (and thus the taxpayer) of its proprietary interest in the automobiles, the agents' action did not violate any privacy interest. Since there is no abridgement of any expectation of privacy at stake but only the validity of the transfer of a proprietary interest (which can be rectified by the return of the property or by some form of monetary compensation), there is even less necessity for the interposition of a judicial officer to make the probable cause finding. The values of the Fourth Amendment are sufficiently protected in such cases by its general reasonableness requirement without the need for antecedent magisterial approval to deprive a delinquent taxpayer of his possessory interest in a chattel.

The proprietary interest of the government in the taxpayer's assets held in the name of petitioner is significant. As we have pointed out at pp. 24-25, *supra*, Section 6321 of the Code imposes a lien on all property belonging to the delinquent taxpayer. Thus, in a very real sense, the agents' seizure of the automobiles and of the building in which petitioner main-

tained its business premises served to assert and safeguard the government's interest in both the automobiles and the contents of petitioner's business premises. In an analogous context, the Court in *Davis* v. *United States*, 328 U.S. 582, upheld the warrantless search and seizure of gasoline ration coupons and their evidentiary use in a criminal proceeding on the theory that they never became the private property of the holder but remained at all times the property of the government. In so holding, the Court observed that "an owner of property who seeks to take it from one who is unlawfully in possession has long been recognized to have greater leeway than he would have but for his right to possession. The claim of ownership will even justify a trespass and warrant steps otherwise unlawful. [citations omitted]" (328 U.S. at 591).

In light of the above, it is hardly surprising that no court has held that the Fourth Amendment judicial warrant requirements are applicable to the Treasury in the exercise of its statutory power to levy upon and seize a delinquent taxpayer's properties such as the automobiles in this case. Because such seizures are undertaken for the non-investigatory purpose of collecting debts owed to the government, they come within a narrow category of governmental actions, which, like forfeitures,[15] do not implicate the warrant requirement of the Fourth Amendment.

---

[15] See *Boyd* v. *United States, supra*, 116 U.S. at 623; *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663. Significantly, in upholding the constitutionality of a Puerto Rican forfeiture statute in *Calero-Toledo*, the Court did not discuss the Fourth Amendment.

Indeed, the only federal appellate decision that holds that the warrant requirement of the Fourth Amendment does apply to the seizure of an automobile from the defendant's driveway containing forfeitable contraband is *United States* v. *McCormick*, 502 F.2d 281 (C.A. 9). There, the court grounded its decision in large part on the fact that the agents had ample opportunity to obtain a warrant and that there were no exigent circumstances indicating that the automobile was about to be moved. The court also noted that the automobile was not contraband *per se*, and that there was an ensuing warrantless investigatory search of the contents of the automobile.

While the investigatory search aspects of *McCormick* distinguish it from the seizures in this case, we believe that *McCormick* was wrongly decided insofar as it held that a warrant was necessary for a seizure of forfeitable property. In this respect, it is significant that all the other circuit courts of appeals which have considered the matter have held that no warrant is required to seize a vehicle for forfeiture. *United States* v. *Troiano*, 365 F.2d 416, 418-419 (C.A.3), certiorari denied, 385 U.S. 958; *United States* v. *Trotta*, 401 F.2d 514, 516 (C.A. 4), certiorari denied *sub nom. Genovese* v. *United States*, 394 U.S. 908; *United States* v. *McKinnon*, 426 F.2d 845, 849-850 (C.A. 5), certiorari denied, 400 U.S. 868; *United States* v. *White*, 488 F.2d 563, 564-566 (C.A. 6); *O'Reilly* v. *United States*, 486 F.2d 208, 210-211 (C.A. 8), certiorari denied, 414 U.S. 1043; *United States* v. *Stout*, 434 F.2d 1264, 1266-1267 (C.A. 10).

3. Although *Murray's Lessee* is the only decision of this Court squarely holding that the Treasury's warrantless seizure of a delinquent taxpayer's property does not violate the Fourth Amendment,[19] the proposition finds additional support in the Court's decisions sustaining the right of the government to collect taxes by summary administrative proceedings. As the Court stated in *Bull* v. *United States*, *supra*, 295 U.S. at 260, a tax "assessment is given the force of a judgment, and if the amount assessed is not paid when due, administrative officials may seize the debtor's property to satisfy the debt." See also *Cheatham* v. *United States*, 92 U.S. 85, 87-90; *State Railroad Tax Cases*, 92 U.S. 575, 612-615; *Graham* v. *duPont*, 262 U.S. 234, 255. It is equally well settled that while the underlying merits of a tax assessment are potentially subject to judicial scrutiny, it is presumptively correct. See, *e.g.*, *United States* v. *Rexach*, 482 F.2d 10, 15-18 (C.A. 1), certiorari denied, 414 U.S. 1039; *Crosby* v. *United States*, 496 F.2d 1384, 1390 (C.A. 5); *Psaty* v. *United States*, 442 F.2d 1154, 1158-1161 (C.A. 3); *Plisco* v. *United States*, 306 F.2d 784, 786 and n. 2 (C.A.D.C.), certiorari denied, 371 U.S. 948. See also 26 U.S.C. 7426(c).

The underlying rationale of these decisions is that the very existence of government depends upon the prompt collection of the revenues. Thus, in *Phillips*

[19] See also *Mason* v. *Rollins*, 16 Fed. Cas. 1061 (No. 9,252) (C.C. N.D. Ill.); *Hogan* v. *Ingle*, 12 Fed. Cas. 311 (No. 6,583) (C.C. D.C.); *Camden County Beverage Co.* v. *Blair*, 46 F.2d 648 (D. N.J.); *In re Meador*, 16 Fed. Cas. 1294 (No. 9,375) (N.D. Ga.); *State* v. *Marshall*, 100 Miss. 626, 646, 56 So. 792, 797.

v. *Commissioner*, 283 U.S. 589, 596-597, a unanimous Court rejected a constitutional challenge to the statutory system under which taxes may be collected summarily without a pre-seizure judicial hearing. The Court held that the statute met the requirements of due process as long as there was an adequate opportunity for a post-seizure determination of the taxpayer's legal rights. See also *Fuentes* v. *Shevin*, 407 U.S. 67, 92 and n. 24; *Mitchell* v. *W. T. Grant Co.*, 416 U.S. 600, 611-612. Accord: *Commissioner* v. *Shapiro*, No. 74-744, decided March 8, 1976, slip op. 15-16;[20] *United States* v. *Heck*, 499 F.2d 778, 792-793 (C.A. 9); *Sandnes' Sons, Inc.* v. *United States*, 462 F.2d 1388, 1392 (Ct. Cl.) (dictum).

If, as those decisions indicate, the collection of taxes by summary administrative proceedings without a pre-seizure judicial hearing is constitutionally justified because of the government's urgent need to secure its revenues, that policy equally supports the

[20] A taxpayer subject to a levy pursuant to a jeopardy assessment such as in this case does have an adequate post-seizure judicial remedy. Apart from his right to seek a redetermination of the deficiency in the Tax Court (cf. *Laing* v. *United States*, *supra*, No. 73-1808, decided January 13, 1976 (Brennan, J., concurring at slip op. 3)), the taxpayer may bring an immediate action to enjoin the Commissioner from collection and seek to overcome the bar of the Anti-Injunction Act, 26 U.S.C. 7421, by demonstrating irreparable injury and that under no circumstances will the government prevail on the merits of its claim. *Enochs* v. *Williams Packing Co.*, 370 U.S. 1, 7. As the Court stated in *Commissioner* v. *Shapiro*, *supra*, No. 74-744, decided March 8, 1976, this standard "is at least as favorable to the taxpayer as that required by the Constitution" (slip op. at 17). See also *New Hampshire Fire Insurance Company* v. *Scanlon*, *supra*, 362 U.S. 404, 406-408.

government's right, when circumstances so demand, to make such seizures without obtaining a judicial warrant. While these cases turned on due process rather than on Fourth Amendment considerations, it is significant that the Court in *Phillips* cited *Murray's Lessee* with approval as a case which sustained "[p]roceedings more summary in character * * *" and "involving less directly the obligations of the taxpayer * * *" (283 U.S. at 596).

C. *Long Before the Adoption of the Fourth Amendment, Delinquent Taxpayers in England and America Were Subject to Warrantless Seizures of Their Property in Aid of the Collection of Taxes*

1. The longstanding congressional authorization of warrantless seizures of a delinquent taxpayer's property by the tax collector does not *per se* abridge the Fourth Amendment, even where, as here, there is an entry into the taxpayer's business premises for the purpose of searching for and seizing his property. As we shall discuss below, it was well established at common law that a sheriff could forcibly enter a nonresidential building and seize its contents to execute a judgment in a private case. Moreover, in executing a judgment on behalf of the sovereign, the sheriff was also empowered at common law to enter residential premises. In empowering the Treasury to collect by levy and distraint, it is hardly likely that Congress intended the Treasury to be subject to any greater restrictions in enforcing collection than existed at common law. We therefore submit that such seizures would violate the Fourth Amendment only if they were used under the guise of tax collection

while their purpose was in fact investigatory or if they were carried out in an unreasonable manner. As we point out in greater detail in Point I.F, *infra*, pp. 72-76, neither circumstance exists in this case.

The common law practice and statutes, antedating the Fourth Amendment, as well as the history of the adoption of that constitutional provision, confirm that the Fourth Amendment was not intended to limit the Treasury's power to conduct warrantless entries into the business premises of delinquent taxpayers for purposes of seizing property to satisfy unpaid taxes. As this Court recognized in *Palmer* v. *McMahon*, 133 U.S. 660, 670, involving the collection by seizure of state taxes, "[c]ollection by distress and seizure of person is of very ancient date," citing *Murray's Lessee*, *supra*, and a series of English statutes which date back to the thirteenth century. The English common law was so well established that by the sixteenth century Coke was able to state that "By order of the common law, the king for his debt had execution of the body, lands, and goods of the debtor." II Coke, *Institutes* 19 (1797 ed.).

Although Chapter VIII of the Magna Carta had restrained the Crown from seizing lands or rents "as long as the present goods and chattels of the debtor do suffice to pay the debt," this provision did not limit the basic power of the Crown to seize property of its debtors. For example, in 1266, the statute of 51 Hen. III, Stat. 4, recognized that the King had a right of distraint against the property

of his debtors. It provided the requirements that sheriffs and other officers were to observe in enforcing distress, including that "such Distresses be reasonable, after the Value of the Debt or Demand, and by the Estimation of Neighbors, and not by Strangers, and not outrageous." The statute of 33 Hen. VIII, c. 39, enacted in 1541, gave all "obligations" due the Crown the same status as debts of record. See Gilbert, *An Historical View of the Court of Exchequer* 110-128 (1738).

Thus, since at least the thirteenth century, the King's Exchequer had broad authority to issue writs authorizing immediate collection by means of distraint against the property of those indebted to the Crown. It has aptly been said that these writs amounted to "a combination of every species of compulsory process known to the law." Price, *Treatise on the Law of the Exchequer* 119 (1830).

It was likewise well established in England that such seizures could be executed by forced entry. At common law, a sheriff or similar official could make a forced entry into any building, including a personal residence, in execution of the king's process, as long as he "signify the cause of his coming, and * * * make[s] request to open [the outer] doors * * *." *Semayne's Case*, 3 Coke's Rep. (Fraser ed.), Part V, fol. 91a, 186-187, 77 Eng. Rep. 194, 195 (K.B., 1604).[21] Although at least since *Semayne's*

[21] See *The King* v. *Ford*, 4 Nev. and Manning 451 (K.B., 1835); *Reading* v. *Chew*, 3 Gt. Br. Tax Cas. 625 (1898). Accord, *Keith* v. *Johnson*, 31 Ky. (1 Dana) 604, 605; see *Syndacker* v. *Brosse*, 51 Ill. 357, 359-360; *Vanden Bogert* v. *May*, 334 Mich. 606, 611, 55 N.W.2d 115, 117-118. See also 38 Geo. III, c. 5, Sec. 17; 12 Halsbury's *Laws of England* (3d ed. 1955), *Distress*, pp. 196-198, Nos. 363-369.

This Court recognized this common law principle in *Miller* v. *United States*, 357 U.S. 301, where on the basis of *Semayne's Case* and other early English common law precedents, it held that when an officer has probable cause to make an arrest he may forcibly enter a personal residence or dwelling if he gives a "prior notice of [his] authority and purpose * * *" (357 U.S. at 313).

Case, a sheriff or other peace officer could not forcibly enter a personal residence or dwelling house to execute or distrain pursuant to a private debt or judgment,[22] he could forcibly enter a nonresidential building without a judicial warrant in order to execute a judgment in a private cause. See, *e.g.*, *Penton* v. *Brown*, 1 Keble 698, 83 Eng. Rep. 1193 (1664); *Hodder* v. *Williams*, [1895] 2 Q.B. 663; *Haggerty* v. *Wilber*, 16 Johns. 286, 8 Am. Dec. 321 (N.Y.); *Burton* v. *Wilkinson*, 18 Vt. (3 Washburn) 186, 189. See also ALI, Restatement of the Law of Torts 2d, § 208 (1965). *A fortiori*, he could have forcibly entered a business premises as the revenue agents did in this case to collect a debt for taxes due to the Crown. Indeed, as we point out *infra*, pp. 63-64, the Internal Revenue Service's instructions to its agents adopt this common law distinction between personal

[22] See, *e.g.*, The 13th Yearbook of Edward IV (1461-1483), fol. 9, paraphrased in *Miller* v. *United States*, *supra*, 357 U.S. 301, 307; *Curtis* v. *Hubbard*, 4 Hill 437 (N.Y. Sup. Ct.); *Groves* v. *Bloxom*, 3 Houst. 544 (Del. Super. Ct.); *Sutton* v. *Allison*, 47 N.C. (2 Jones Law) 339; *Hooker* v. *Smith*, 19 Vt. (4 Washburn) 151; *Keith* v. *Johnson*, *supra*; *Syndacker* v. *Brosse*, *supra*; *State ex rel. McPherson* v. *Beckner*, 132 Ind. 371, 31 N.E. 950.

residences and business premises which is applicable to private judgments.

2. Warrantless seizure of a taxpayer's property to collect taxes also was authorized by various revenue statutes enacted in America prior to the ratification of the Constitution. Those statutes permitted the collector of the revenues to levy and distrain against a person's property when he neglected or refused to pay the taxes assessed against him.

For example, a Massachusetts Act provided that where "any person shall refuse to pay the sum or sums which he shall be assessed as his proportion to any rate or tax * * *, it shall and may be lawful to and for such * * * Collector, and he is hereby authorized and required, in such case, to distrain the person so refusing by his goods or chattels." Act of March 16, 1786, Sec. 2 (1 Perpetual Laws of Massachusetts (1780-1800), pp. 303, 304).[23] This provision was enacted six years after the Massachusetts Declaration of Rights, which prohibited "unreasonable searches and seizures" (Article XIV) and was a precursor of the Fourth Amendment. See Landynski, *Search and Seizure and the Supreme Court* 38-39 (1966).

The enactment of this Massachusetts statute in-

[23] The Massachusetts statute provided that the collector would be given written authority from the selectmen or assessors of the town or district to collect the taxes entered on the assessor's "list." Act of March 16, 1786, Secs. 1, 2 (1 Perpetual Laws of Massachusetts (1780-1800) pp. 303, 304). If a taxpayer refused to pay the assessed tax, his goods and chattels were to be levied upon by the collector and sold after four days.

dicates that such summary collection procedures were not deemed to be inconsistent with the principles eventually set forth in the Fourth Amendment's prohibition against "unreasonable searches and seizures." Indeed, similar powers of levy and distraint were given to tax collectors in each of the original states which had adopted a prohibition against unreasonable searches and seizures in its declaration of rights.[24]

The history of the Pennsylvania experience deserves special emphasis. In that State, administration of the revenue laws was vested in the commissioners and assessors of each county. Initially, the

[24] See, *e.g.*, Act for Ascertaining What Property in this State shall be Deemed Taxable Property, The Method of Assessing the Same, and Collecting Public Taxes, Laws of North Carolina (1715-1800), pp. 429, 431 (Iredell 1791); Act for Raising a Supply of Money for Public Exigencies, 9 Hening's Virginia Statutes (1775-1778), p. 358 (October, 1777); An Act to Raise the Supplies for the Year Seventeen Hundred and Eighty-Two, Secs. LXIII, LXIX, Laws of Maryland (1780-1783), May, 1781, c. IV; Act of February 11, 1791, Laws of New Hampshire (1797), pp. 213-214; Act of December 10, 1796, Laws of New Hampshire (December 1796), p. 4. The Massachusetts and Pennsylvania statutes are described above in the text. See also Act of October 17, 1797, c. 25, 1797 Vermont Laws Revised, pp. 335-337; Act Empowering Collectors to Collect Rates, Vermont State Papers and Laws (1779-1786), pp. 312-313.

Three others of the original States, which did not have prohibitions against unreasonable searches and seizures, had similar statutes empowering their tax collectors to levy upon and seize property. See, *e.g.*, Act of March 7, 1788, Sec. II, Laws of New York (1787-1789) (2 Jones & Varick, p. 341 (1789)); Act of February 27, 1788, 5 Stat., South Carolina (1839 ed.), No. 1383, pp. 52-53; An Act for Collecting and Paying Rates or Taxes, Acts and Laws of Connecticut (1784), pp. 197, 202.

Pennsylvania statute conferred extremely broad powers on the collector of taxes, who was authorized "to break open, in the day time, any house, trunk, box, chest, closet, cup-board or other things, where any such offender's goods and chattels or effects are supposed to be, and make distress and sale thereof * * *." Act of March 27, 1782, 2 Pennsylvania Laws (1781-1790), pp. 4, 12, Sec. XXIV.

For the express purpose of conforming these powers to Article X of the Pennsylvania Declaration of Rights of 1776 (which proclaimed freedom from unreasonable search and seizure and was thus another predecessor of the Fourth Amendment),[25] the Pennsylvania legislature amended the statute in 1785 to prohibit revenue collectors from forcibly entering "any dwelling-house" without first securing a warrant.[26] Act of April 5, 1785, 2 Pennsylvania

[25] See Lasson, *The History and Development of the Fourth Amendment*, p. 81 (1937).

[26] The purpose of the amendment is set forth in the preamble to the statute. The amended version of the Pennsylvania statute was limited solely to the collector's authority to enter dwellings. It did not alter the statutory authority of the collector to seize any other assets belonging to a delinquent taxpayer, without a warrant, by summary administrative means. Under state statutes deemed compatible with the Pennsylvania analogue of the Fourth Amendment, a collector was free to enter commercial property or any other building that was not a personal residence without first securing a judicial or even an executive warrant. See Lasson, *The History and Development of the Fourth Amendment*, *supra*, p. 81. In addition, in cases involving a personal residence, where an administrative warrant was required, it was not incumbent upon the collector to establish the validity of the

Laws (1781-1790), pp. 306, 307. Section II of the 1785 Act, however, specifically authorized the county commissioners, who, rather than judicial officers, were vested with principal responsibility for the administration of the revenue acts,[27] to issue warrants for this purpose with respect to the collection of various taxes.

This latter authorization is particularly significant to the question presented in this case, since it shows that the Pennsylvania legislature did not regard the issuance of a warrant by the executive officials administering the revenue laws as violating the principle of freedom from unreasonable searches and seizures embodied by the Pennsylvania Declaration of Rights.[28] This statute thus reflects the con-

assessment made against the taxpayer, but only that there was probable cause to believe that goods subject to levy were to be found in the residence. The distinction between dwelling houses and other buildings may have been based upon common law principles (see pp. 41-43, *supra*) or possibly upon the Pennsylvania legislators' understanding of James Otis' argument in the writs of assistance cases (see pp. 55-59, *infra*).

[27] See Act of March 27, 1782, 2 Pennsylvania Laws (1781-1790), pp. 4, 5-8, 10-12 (Secs. III, IV, VII, VIII, XIX, XXII and XXIII), concerning the administration and collection responsibilities of the county commissioners.

[28] In some States, the early statutes provided that the tax officials were to turn over unpaid assessments to constables, sheriffs, or other peace officers, who were then directed to distrain pursuant to the assessment and the writ or warrant given by the tax officials. See, *e.g.*, Act of October 17, 1797, c. 25, 1797 Vermont Laws Revised, pp. 335-346; Act of February 27, 1788, 5 Stat., South Carolina (1839 ed.), No. 1383, pp. 50-57; An Act for Collecting and Paying Rates or Taxes, Acts and Laws of Connecticut (1784), pp. 197-204.

temporary understanding that the common law principles permitting seizure of property from residential or nonresidential premises to collect taxes without a judicial warrant did not violate the constitutional prohibition against unreasonable searches and seizures that was soon to be formally adopted as the Fourth Amendment.

Since those procedures had long been embodied in common law and state constitutional principles, it is understandable that this Court in *Murray's Lessee* later deemed them to be compatible with the Fourth Amendment.[29] Indeed, the history of this Pennsylvania statute confirms Professor Taylor's observation with respect to the original understanding of the Fourth Amendment that "our constitutional fathers were not concerned about warrantless searches, but about overreaching warrants." Taylor, *Two Studies in Constitutional Interpretation* 41 (1969). See also Lasson, *supra*, *The History and Development of the Fourth Amendment* 51-78 (1937); Landynski, *Search and Seizure and the Supreme Court* 30-42 (1966).

[29] The defendants' brief in *Murray's Lessee* stated that the statutes of each of the 31 then-existing States authorized tax assessments and levies without resort to judicial proceedings. See Brief for Defendants, *The Hoboken Land and Improvement Co.* v. *Den ex dem. Murray and Kayson*, No. 54 December Term, 1855, p. 5.

D. *The Fourth Amendment Was Not Intended to Limit the Treasury's Power to Make Warrantless Seizures of Property of Delinquent Taxpayers*

1. a. Just as various States in the first years of emergence from their status as English colonies enacted prohibitions against unreasonable searches and seizures but nevertheless empowered their tax collectors to seize property without a judicial warrant, the Framers of the Constitution likewise saw no inconsistency between the guarantee of the Fourth Amendment and the statutory authority of the Treasury to collect revenues by summary means. They recognized that the power of taxation was "the most important of the authorities proposed to be conferred upon the Union" (*The Federalist* No. 33, p. 205 (Cooke ed., 1961)).

As a result, they included the authority "to lay and collect taxes" in Article I, Section 8, of the Constitution as one of the enumerated powers of the federal government.[30] The Founding Fathers thereby

[30] One of the principal defects in the Articles of Confederation was that the central government lacked the authority to impose and collect taxes and was thereby dependent on the States for its revenues. See *The Federalist*, *supra*, Nos. 15, 21, 23, 30, pp. 93, 132, 148-149, 188-190. Article VIII of the Articles of Confederation provided that "The taxes * * * shall be laid and levied by the authority and direction of the Legislatures of the several States within the time agreed upon by the United States in Congress assembled." Although a call for revenues by the central government was conceived "in every constitutional sense [as] obligatory upon the States," (*The Federalist*, *supra*, No. 30, p. 189) this system in fact resulted in the impoverishment of the central government because the States in practice used their intermediate role in

vested the "Federal government * * * with an unqualified power of taxation in the ordinary modes" (*The Federalist, supra,* No 31, p. 196). They also viewed the authority to collect taxes by summary administrative action as "essential to the efficacy of the revenue laws" and necessary to meet the "exigencies of the public." *The Federalist, supra,* No. 83, p. 563.

From the very beginnings of the Republic, the statutory power of seizure now set forth in Section 6331 of the current Code was regarded as a necessary and proper exercise of the congressional taxing power. As we point out below (pp. 54-55), this consistent legislative view is of considerable significance in establishing the constitutional validity of the practice.

The First Congress, which also proposed adoption of the Bill of Rights, provided that taxes could be "levied by distress and sale of goods of the person or persons refusing or neglecting to pay." Act of March 3, 1791, c. 15, Sec. 23, 1 Stat. 199, 204. See also Act of July 31, 1789, c. 5, Secs. 12, 26, 27, 1 Stat. 29, 39, 43-44; Act of August 4, 1790, c. 35, Secs. 27, 28, 50, 1 Stat. 145, 163-164, 170. As shown by this Court's decision in *Abel* v. *United*

---

the tax collection process as a means of questioning the central government's claim for revenues. As a result, the proponents of the new federal system believed it was essential that the revenue laws of "the Federal Government * * * [be imposed directly on] the individual citizens of America." *The Federalist, supra,* No. 23, p. 148. See also *The Federalist, supra,* No. 15, p. 93.

States, 362 U.S. 217, and most recently in *United States* v. *Watson,* No. 74-538, decided January 26, 1976, the views of the early Congresses constitute particularly persuasive authority regarding the types of searches and seizures that were barred by the Fourth Amendment. Indeed, since the First Congress, every subsequent Congress that enacted an internal revenue statute afforded similar levy and distraint powers to the Treasury in order to enforce collection.[31] This consistent statutory authority reflects the

---

[31] See, *e.g.,* Act of July 14, 1798, c. 75, Sec. 9, 1 Stat. 597, 600; Act of July 22, 1813, c. 16, Secs. 21, 22, 3 Stat. 22, 30-31; Act of December 21, 1814, c. 15, Sec. 5, 3 Stat. 152, 154; Act of January 9, 1815, c. 21, Sec. 26, 3 Stat. 164, 173; Act of January 18, 1815, c. 22, Sec. 5, 3 Stat. 180, 182-183; Act of January 18, 1815, c. 23, Sec. 9, 3 Stat. 186, 188-189. Shortly after the end of the War of 1812, all internal taxes were repealed (Act of December 23, 1817, c. 1, Sec. 1, 3 Stat. 401), and were not revived until the Civil War.

The internal revenue statutes enacted during the Civil War period likewise made it "lawful for * * * [the] collector, or his deputies, to proceed to collect the said taxes by distraint and sale of the goods, chattels, or effects of the persons delinquent." Act of August 5, 1861, c. 45, Secs. 35, 36, 12 Stat. 292, 303-304; Act of July 1, 1862, c. 119, Secs. 19-22, 12 Stat. 432, 439-442; Act of June 30, 1864, c. 173, Secs. 28-31, 13 Stat. 223, 232-236; Act of March 3, 1865, c. 78, 13 Stat. 469, 470-471; Act of July 13, 1866, c. 184, 14 Stat. 98, 106-109. These Civil War statutes generally separated the function of tax assessors, who were charged with ascertaining a taxpayer's liability, from the duties of the collector of the revenue. See Act of July 1, 1862, *supra,* Secs. 2-19. This distinction survives today as part of the present organization of the Internal Revenue Service.

The levy and distraint authority of collectors of the federal revenues was codified in Revised Statutes, Section 3187, and

unchanging legislative view that warrantless seizures of property in aid of the collection of revenues were compatible with the "reasonableness" requirements of the Fourth Amendment.

In empowering the Treasury to conduct seizures of property, Congress was surely aware that circumstances would arise in which such seizures could be accomplished only by forcible entry as in this case. But nowhere in any of the statutes is the seizure authority conditioned upon the issuance of a judicial warrant. Indeed, Sections 6331(b) and 7701(a)(21) of the current Code define the term "levy" as including the "power of distraint and seizure *by any means*" (emphasis supplied). While the phrase "by any means" was not included in the levy statute until the 1954 codification, the observation of the pertinent committee reports that Section 6331 "continues in effect the provisions of existing law relating to distraint and levy" (H.R. Rep. No. 1337, 83d Cong., 2d Sess. A408, A438 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. 577, 619 (1954)) suggests that Congress was aware that the Treasury had long been authorized to employ a reasonable degree of force necessary to execute a seizure.

Finally, a comparison of the customs statutes with the internal revenue statutes enacted by the First Congress demonstrates that Congress knew how to

---

this provision in turn was the predecessor of Section 3690 of the Internal Revenue Code of 1939 (26 U.S.C., 1952 ed.) and Section 6331 of the present Code.

impose a judicial warrant requirement when it wished to do so. Section 24 of the Act of July 31, 1789, c. 5, 1 Stat. 29, 43, the first customs statute, provided that the collectors had full authority "to enter any ship or vessel, in which they shall have reason to suspect any goods * * * subject to duty shall be concealed; and therein to search for, seize, and secure any such goods * * *." However, if the collector had reason to suspect that goods were concealed "in any particular dwelling-house, store, building, or other place," the statute provided that "they * * * shall, upon application on oath or affirmation to any justice of the peace, be entitled to a warrant to enter such house, store, or other place (in the day time only) and there to search for [and seize] such goods * * *." By requiring a judicial warrant only in those investigatory customs seizures conducted other than on ships and omitting such a warrant requirement with respect to seizures to collect assessed internal taxes, the First Congress manifested an intent not to require warrants for tax seizures.

b. The foregoing historical and statutory material confirms this Court's holding in *Murray's Lessee* that the Fourth Amendment was not intended to modify the common law right of the government to levy upon and seize a delinquent taxpayer's property without a judicial warrant in satisfaction of a specific tax debt. Section 6331 of the Code, which authorizes "distraint and seizure by any means," reflects a judgment by Congress from the earliest days of the Republic that the Fourth Amendment does

not prohibit the Internal Revenue Service from seizing property without a warrant if, upon notice and demand, a taxpayer fails or refuses to pay an assessed tax.

This statutory history and the common law tradition upon which it is based are of great significance. It was on the basis of a similar longstanding legislative judgment that the Court in *Abel* v. *United States*, *supra*, 362 U.S. 217, 232, sustained an administrative arrest made without "a judicial warrant within the scope of the Fourth Amendment * * *" and a search incident to that arrest. There, agents of the Immigration and Naturalization Service arrested Abel on an administrative warrant for deportation, searched his hotel room and seized certain articles which were later introduced into evidence at a criminal trial charging him with conspiracy to commit espionage. In upholding the arrest and the ensuing search incident to the arrest as compatible with the Fourth Amendment, the Court cited the "overwhelming historical legislative recognition of the propriety of administrative arrest for deportable aliens * * *" (*id.* at 233).

Similarly, in *United States* v. *Watson*, *supra*, No. 74-538, decided January 26, 1976, the Court relied upon comparable legislative action in holding that the Fourth Amendment did not bar postal inspectors from making warrantless arrests in public on probable cause. Since there is a "strong presumption of constitutionality due to an Act of Congress, especially when it turns on what is 'reasonable'"

(*United States* v. *Di Re*, 332 U.S. 581, 585), we submit that a warrantless seizure made for the purpose of tax collection is also consistent with the Fourth Amendment.

2. There is no indication that the proponents of the Fourth Amendment equated warrantless seizures to collect specific debts of internal taxes with unreasonable searches and seizures. To be sure, the origins of the Fourth Amendment may be traced in part to the legal battles waged over the writs of assistance employed by the English Crown. But these writs were issued by the courts [32] for investi-

---

[32] Since 1755, it was the Superior Court of Massachusetts which issued the writs of assistance over which this litigation took place. See Lasson, *The History and Development of the Fourth Amendment*, *supra*, at 55-56. Otis and the other advocates against the writs of assistance did not regard judicial warrants as an effective guarantee against unreasonable searches and seizures. As one commentator has observed: "Far from looking at the warrant as a protection against unreasonable searches, they saw it as an authority for unreasonable and oppressive searches." Taylor, *Two Studies in Constitutional Interpretation*, *supra*, at 41. Significantly, Oxenbridge Thatcher, who also opposed the issuance of the writs of assistance, though less eloquently than Otis, simply argued that while such writs could properly issue from the Exchequer, the Superior Court did not have "Chancery Jurisdiction, which the Exchequer has, in cases where either party is the King's debtor," and therefore had no jurisdiction to issue writs of assistance. Charles Francis Adams, *The Works of John Adams*, Vol. 2, p. 521 (1850); Wroth and Zobel, eds., *Legal Papers of John Adams*, Vol. 2, pp. 138-139 (1965). In 1766, one of the Townshend Acts (7 Geo. III, c. 46, Sec. 10) accordingly conferred jurisdiction upon the Superior or Supreme Court of each province to issue writs of assistance,

gatory purposes and conferred upon officers unfettered authority of no fixed duration to conduct roving searches by entering any private dwelling in search of goods upon which duty had not been paid. While the writs of assistance were broadly related to the enforcement of the revenue laws of the Crown, they are quite unlike a tax collector's levy upon a delinquent taxpayer's property to collect a specific tax debt. The Fourth Amendment was intended to prohibit the former type of investigatory seizure without antecedent judicial intervention, but not a levy in aid of tax collection.

The distinction between the general investigatory writs of assistance and tax levies is confirmed by the fact that James Otis' celebrated argument against the writs of assistance in *Paxton's Case*[34] did not

---

thereby making the courts themselves the continuing source of the colonists' resentment over the writs. See Lasson, *The History and Development of the Fourth Amendment, supra,* at 70.

[34] The complete text of Otis' argument is not available. *Paxton's Case,* Massachusetts Reports (Quincy) 51 (1761-1772), which is often referred to as the *Writs of Assistance* case, involved the application of Charles Paxton, "who bore the ominous title of Surveyor and Searcher of the Port of Boston," and of Thomas Lechmere, Surveyor General of the Customs, for issuance of writs of assistance by the Superior Court of Massachusetts. See Landynski, *Search and Seizure and the Supreme Court* 32-33 (1966); Wroth and Zobel, eds., *Legal Papers of John Adams,* Vol. 2, pp. 112-114 (1965). John Adams' account of the argument may be found in Charles Francis Adams, *The Works of John Adams,* Vol. 2, pp. 521-525 (1850), and in Wroth and Zobel, eds., *Legal Papers of John Adams, supra,* Vol. 2, pp. 123-144.

challenge the ultimate right of the government to collect its revenues without a judicial warrant once a determination had been made that an individual taxpayer was delinquent in his taxes. The gist of Otis' argument was that the writs of assistance were general in scope, that they were not returnable so that the holder was not accountable, and that they authorized all searches made by customs officers and their deputies. "The discretion delegated to the official was therefore practically absolute and unlimited." See Lasson, *The History and Development of the Fourth Amendment, supra,* p. 54.

Otis argued that the writs were illegal because their investigatory purpose rendered them inconsistent with the fundamental common law principle, which he identified as "The privilege of House." Charles Francis Adams, *The Works of John Adams, supra,* Vol. 2, at 521; Wroth and Zobel, eds., *Legal Papers of John Adams, supra,* Vol. 2, at 125. As Otis argued, the writs encroached on the "freedom of one's house," since "no man, no court" could inquire whether there was a basis for a search made pursuant to them. He therefore urged that the only type of writ that was proper was a "special writ of assistance," which would be granted on oath and would authorize the search of particular houses. See Wroth and Zobel, eds., *Legal Papers of John Adams, supra,* Vol. 2, at 142. This special writ envisioned by Otis was the antecedent of the modern search warrant, issued on probable cause.

Apart from the fact that Otis spoke against the background of the common law which had long au-

thorized both the Crown and private creditors to dispatch the sheriff to seize property of their delinquent debtors (see pp. 41-43, *supra*), the vices of the writs of assistance which he described bear no resemblance to the collector's seizure of a tax debtor's property. Unlike the broad sanction for investigatory searches conferred by the writs of assistance, a tax levy is not investigatory in character but proceeds upon the existence of a specified debt of which the taxpayer is well aware, since demand for payment has already been made upon him. Moreover, the collector does not act with unbridled discretion but is empowered to seize only an amount of property sufficient to satisfy the debt.

To be sure, Otis' opponent, Gridley, sought to justify the writs of assistance by analogizing them to "the Method of collecting Taxes in this Province." Wroth and Zobel, eds., *Legal Papers of John Adams*, *supra*, at 130. But Gridley's proposed analogy does not establish that the writs of assistance were equivalent to tax levies. On the contrary, his analogy demonstrates that the government's power to execute tax seizures for specific debts was well established and not questioned by Otis.[34] Indeed, as we have noted (pp. 44-45, *supra*), each state that subsequently adopted a constitutional prohibition against unreasonable searches and seizures continued to maintain its statutory right to execute tax levies.

[34] The procedure for taking and selling property for nonpayment of taxes was authorized under the laws of the Province of Massachusetts. See Act of 3 October 1730, c. 1, Secs. 12, 13, 2 Acts and Resolves 552-553. Adams' account of Otis' argument does not contain any refutation of Gridley's analogy to the tax seizure power.

In sum, Otis' historic challenge to the English writs of assistance provides additional support for our argument that the Fourth Amendment was not intended to impose a judicial warrant requirement upon the execution of tax levies.

3. Finally, it is significant that James Madison, who was the principal sponsor of the Bill of Rights in the First Congress, recognized the distinction subsequently made by the Court in *Boyd* between general investigatory warrants to enforce the revenue laws and a levy to collect a specific debt for taxes previously determined to be owed. In answer to the argument that the Bill of Rights was unnecessary because the powers of the federal government were enumerated, Madison emphasized the evil of the general warrant and equated the prohibitions against the state governments provided by the declarations of rights of the various States with those provided by the Bill of Rights. He stated (1 Annals of Congress 438 (1834 ed.)):

> Now, may not laws be considered necessary and proper by Congress, (for it is for them to judge of the necessity and propriety to accomplish those special purposes which they may have in contemplation,) which laws in themselves are neither necessary nor proper; as well as improper laws could be enacted by the State Legislatures, for fulfilling the more extended objects of those Governments? I will state an instance, which I think in point, and proves that this

might be the case. The General Government has a right to pass all laws which shall be necessary to collect its revenue; the means for enforcing the collection are within the direction of the Legislature: may not general warrants be considered necessary for this purpose, as well as for some purposes which it was supposed at the framing of their constitutions the State Governments had in view? If there was reason for restraining the State Governments from exercising this power, there is like reason for restraining the Federal Government.

Madison's emphasis upon the general warrant and his reference to the prohibitions against them in the declarations of rights of the States again demonstrate that it was the abuse of the general warrant, which authorized investigatory intrusions by the tax collector, and not abuse of the levy power that prompted the adoption of the Fourth Amendment. As we have pointed out (*supra*, pp. 44-48), the power of the state tax collectors to levy upon and seize the property of delinquent taxpayers to satisfy a specific debt was considered to be compatible with the state prohibitions against "unreasonable searches and seizures." Since the authority of the new central government to collect its debts by summary means was no more limited than that of the States, the Fourth Amendment was not intended to limit the power of the federal government to levy upon and seize property to satisfy unpaid tax obligations by requiring antecedent magisterial authorization for such seizures.

E. *The Reasons for Requiring a Warrant Prior to an Investigative Search are Inapplicable to the Seizure of the Taxpayer's Property in This Case*

1. In addition to the foregoing historical and statutory evidence which demonstrates that the Fourth Amendment did not extend the warrant requirement to the seizure of a delinquent taxpayer's property, there are also persuasive policy reasons why a warrant requirement would be inappropriate in this type of case. As the Court stated in *Cady* v. *Dombrowski*, *supra*, 413 U.S. at 439, "The ultimate standard set forth in the Fourth Amendment is reasonableness. In construing this command, there has been general agreement that 'except in certain carefully defined classes of cases, a search of private property without proper consent is "unreasonable" unless it has been authorized by a valid search warrant' *Camara* v. *Municipal Court*, 387 U.S. 523, 528-529 (1967). See *Coolidge* v. *New Hampshire*, 403 U.S. 443, 454-455 (1971)."

One of those classes of cases in which a warrant is not required is where the officer reasonably believed that the delay in obtaining a warrant would threaten the destruction of evidence (see *Preston* v. *United States*, 376 U.S. 364, 367; *Schmerber* v. *California*, 384 U.S. 757, 770-771), or where other exigent circumstances justify immediate action. See *Warden* v. *Hayden*, 387 U.S. 294, 298-299. This case comes within the exigent circumstances exception to the warrant requirement.

Here, the taxpayer refused to cooperate with an audit, concealed some of his assets in petitioner,

a sham corporation, and became a fugitive from justice. Prior to the seizure, the revenue agents observed various persons removing boxes of material from petitioner's business premises. In addition, a valuable automobile had disappeared from the garage adjoining petitioner's office (see A. 83).[35] Thus, any further delay incident to obtaining a judicial warrant could have entirely frustrated the Service's collection efforts against the taxpayer's assets held by petitioner. The movable character of petitioner's property required that the Internal Revenue Service take immediate action and seize it pursuant to its authority under Section 6331 in order to satisfy in part its assessment against Norman.

Accordingly, the jeopardy assessment authorizing immediate collection and the ensuing seizure of the automobiles from various open locations and the contents of petitioner's business premises was, as a practical matter, the only remedy left to the Service if the government's vital interest in collecting its tax claim from the taxpayer's property was not to be defeated. Under more normal circumstances, even when involuntary collection procedures are necessary, the government can temporarily protect its interest by filing notices of the lien created by the assessment pursuant to Section 6321 of the Code. See Section 6323(a) and (f). Here, however, that course of action was not a meaningful remedy because neither petitioner G. M. Leasing Corporation nor the taxpayer Norman held any property (such as real estate) against which the filing of a lien would have effectively prevented their transfer. Finally, although the Service usually can summon a delinquent taxpayer to give testimony concerning the extent and location of his assets (see Section 7602 of the Code), that was impossible in this case because the taxpayer had become a fugitive from justice.

[35] The Stutz automobile located in the garage adjoining the cottage, which was removed prior to the seizure of the cottage, was subsequently recovered by the Service at another location (A. 83).

2. The exigent circumstances of this case are illustrative of one type of situation in which the Internal Revenue Service exercises its statutory power of levy and seizure to collect unpaid tax assessments. As we have pointed out *supra*, pp. 21-22, most tax levies involve nothing more than the service of notice to the delinquent taxpayer or to persons holding his property or property on which there is a tax lien. The Service generally prefers to reach an agreement with a delinquent taxpayer as to how he intends to pay his liability. Such an agreement may include the filing of liens to protect the government against the taxpayer's disposition of his property.

But a fair and effective payment plan cannot be concluded by the Service unless the taxpayer fully cooperates with the collection officer and renders a complete account of his assets and liabilities. In the event that the taxpayer refuses to cooperate or there is an indication that he is putting his property beyond the reach of the collector, the Service has no choice but to seize whatever assets may be available.

In exercising its seizure power, however, the Service is scrupulously careful to take only property belonging to the taxpayer and to avoid taking any action that might be considered to be inappropriate or unduly harsh. The Service advises that the procedural guidelines set forth in the manual for its collection officers (see Appendix B, *infra*, pp. 11a-15a) prohibit its agents from using any physical force against any person in connection with the seizure of the taxpayer's property. Moreover, the officers are instructed not to attempt forcible entry into a personal residence over the objection of the person occupying the premises or to change the locks of a personal residence without permission.[36]

Since Internal Revenue Service levies are conducted for the narrow purpose of obtaining possession of property of a delinquent taxpayer and not for gathering evidence, we submit that the Fourth Amendment warrant requirement should not be applied to such seizures. As the Court put it in *Johnson* v. *United States*, 333 U.S. 10, 14, which is quoted with approval in *Coolidge* v. *New Hampshire*, *supra*,

[36] The Service also advises that, as a matter of policy, it does not levy upon and seize a taxpayer's books and records under Section 6331 for the investigatory purpose of obtaining evidence of civil tax liability or of a criminal tax violation. The facts of this case reflect this policy. Here, the assessments against Norman were made prior to the seizure of petitioner's books and records. Moreover, nothing in the records seized by the Service from petitioner's business premises was used to compute the assessment against Norman for 1971 (A. 30). Thus, any role that the Fourth Amendment may play in restricting the investigatory use of seized property is irrelevant here.

403 U.S. at 449, the Fourth Amendment's "protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the *officer engaged in the often competitive enterprise of ferreting out crime*" (emphasis supplied). Because the seizures by the collection agents in this case affected only proprietary as opposed to privacy interests (which would be implicated in an investigatory search) in their seizure of petitioner's property, the rationale for a judicial warrant is inapplicable. Simply stated, the purpose of an Internal Revenues Service levy and seizure is unrelated to an investigatory search in the "traditional criminal law context." *Wyman* v. *James*, 400 U.S. 309, 317.

Finally, the Court has explained the requirement for a judicial warrant particularly describing the things to be seized in an investigatory search as a means of insuring that "nothing is left to the discretion of the officer executing the warrant." *Marron* v. *United States*, 275 U.S. 192, 196. See also *Berger* v. *New York*, 388 U.S. 41, 59. But this principle has little force in a case where the collection agents are directed by Section 6331 of the Code to "levy upon all property and rights to property * * * belonging to such person or on which there is a lien * * *."

Indeed, Section 6334 of the Code specifically exempts from levy an enumerated list of items deemed to be necessities of life. Thus, the collection agents have little discretion as to what property to seize in executing a levy. Since the pertinent statute empowering such seizures thus limits the discretion of

the agents, there is no need for a judicial warrant to accomplish the same objective.

3. a. Contrary to petitioner's contention (Br. 31-32), the foregoing analysis is consistent with *Camara* v. *Municipal Court*, 387 U.S. 523, and *See* v. *City of Seattle*, 387 U.S. 541. In *Camara*, the Court held that the Fourth Amendment barred prosecution of one who refused to allow a warrantless housing code enforcement inspection of his personal residence. The companion *See* decision extended this rule to similar inspections of commercial structures not used as residences.

The Court's opinions in those cases indicated that three basic considerations are critical in determining whether warrants are constitutionally required in the inspection context: the demands of privacy, the public need for warrantless searches, and the standards to be employed in issuing warrants. Here, we submit, these considerations support the validity of the warrantless levy and seizure procedures which Congress has authorized in Section 6331 of the Internal Revenue Code.

Of critical concern to the Court in *Camara* and *See* was the danger that the broad inspection authority exercised in those cases gave too much discretion to the officers in the field (see 387 U.S. at 532-533). But an entirely different situation is presented here, where a revenue collection officer making a levy and seizure has only specific and limited authority under Section 6331 of the Code and is not empowered to conduct a general, exploratory search

(See pp. 65-66, *supra*). Cf. *Coolidge* v. *New Hampshire*, *supra*, 403 U.S. at 467.[37]

Congress was amply justified in concluding that the competing ends of privacy of a delinquent taxpayer and effective protection of the government's revenues would best be served by providing that judicial review of any particular levy occur after the fact rather than requiring the prior approval of a magistrate. See 26 U.S.C. 7421(a).

The considerations of effective tax collection appear to outweigh whatever privacy interests may be deemed to exist in this case since the agents' entry was not into a personal residence that is accorded the "full range of Fourth Amendment protections" (*Lewis* v. *United States*, 385 U.S. 206, 211) but into the business premises of a sham corporation against which the state could presumably exercise its visitorial inspection power to investigate its activities (see *Hale* v. *Henkel*, 201 U.S. 43, 74-75; *Bellis* v. *United States*, 417 U.S. 85, 89). Indeed, petitioner appears to acknowledge as much in its complaint, which states that the premises were owned by Real Estate, Inc. (see n. 5, *supra*) and that the "office was used by [petitioner] not only to store their records, but also as offices of operation" (A. 118).

The second pertinent area of inquiry specified in *Camara* and *See*—"whether the burden of obtaining a warrant is likely to frustrate the governmental

---

[37] The narrow authority of a revenue agent executing a levy is illustrated by the facts of this case, where the agents removed and inventoried everything from petitioner's premises (A. 86).

purpose behind the search" (*Camara*, *supra*, 387 U.S. at 533)—also supports the present statutory scheme. Congress was dealing with the exigencies of tax collection against persons who had demonstrated their refusal to meet their obligations. Such persons, like the taxpayer Norman, are often likely to attempt to put their property beyond the reach of the tax collector. Thus, if warrants were to be sought only after entry is refused, as suggested in *Camara*, *supra*, 387 U.S. at 539, the essential governmental purpose of collecting the revenue would be frustrated. The delinquent taxpayer who has avoided payment of his liability would be likely to utilize the time thereby afforded to conceal or otherwise dispose of his property. The substantial disadvantages to the revenue of using a warrant procedure in the tax collection area justify Congress' authorization of levy and seizure of a delinquent taxpayer's property without warrants.

The third consideration discussed in *Camara* and *See* was the standards for determining whether to issue warrants. There, the reasonableness of searches was dependent principally on the time since the last previous inspection and the physical conditions of the general area (see *Camara*, *supra*, 387 U.S. at 535-538). These considerations, however, have no relevance to the situation here.

The physical conditions in the general area and the passage of time are unrelated to the government's need to levy upon and seize the property of a delinquent taxpayer. In such a situation, the existence of the liability rests upon the presumption of correct-

ness as evidenced by the assessment (see p. 38, *supra*). The fact of the taxpayer's ownership of the property to be seized is usually a matter of public record or is manifested by the location of the property.[38] Thus, the only factors for deciding whether to make such a levy is whether the taxpayer has refused to meet his obligation and whether he has property which could be used to satisfy the outstanding assessments. There are accordingly almost no questions of disputed fact in a tax seizure with respect to which the antecedent evaluation of a magistrate would be required.

b. To the extent that this case resembles any of the administrative searches considered by this Court, it is far closer to *United States* v. *Biswell*, 406 U.S. 311. There, the Court held that a warrantless search of a locked storeroom as part of a gun control inspection procedure authorized by 18 U.S.C. 923(g), which resulted in the seizure of unlicensed firearms from a gun dealer, did not violate the Fourth Amendment. While federal regulation of firearms was not deeply rooted as a historical matter, the Court sustained warrantless inspection because the regulation of guns was of central importance in the prevention of violent crime.

Colonnade Catering Corp. v. *United States*, 397 U.S. 72, also supports our position here. In that case, the Court considered the statutory authoriza-

---

[38] If the Service has erroneously seized a third party's property in satisfaction of a tax assessment, Congress has provided a statutory right of action, which is an exception to the Anti-Injunction Act, 26 U.S.C. 7421. See 26 U.S.C. 7426.

tion for warrantless inspections of federally-licensed dealers in alcoholic beverages. Federal inspectors, without a warrant and without the owner's permission, had forcibly entered a locked storeroom and seized illegal liquor. After reviewing the history of federal control in the area of alcoholic beverages, the Court concluded that Congress had long exercised control over the liquor industry and had ample power "to design such powers of inspection under the liquor laws as it deems necessary to meet the evils at hand" and could have authorized such inspections by means of forcible entry (397 U.S. at 76). However, it held that the particular inspection was beyond the scope of the statute because Congress had not expressly provided for forcible entry in the absence of a warrant but had instead given the government agents a remedy by making it a criminal offense under 26 U.S.C. 7342 to refuse admission to the inspectors.[39]

[39] Unlike the liquor inspection statute at issue in *Colonnade Catering*, Congress has not made it a criminal offense for a delinquent taxpayer merely to refuse admission to a revenue collection officer seeking entry to private premises for the purpose of levy and seizure.

In addition to the liability for the entire amount of taxes due and owing provided by Section 6332(c)(1), Section 6332(c)(2) of the Code provides for personal liability for the taxes owed plus a 50 percent penalty upon "[a]ny person who fails or refuses to surrender any property or rights to property, subject to levy * * *." However, the Internal Revenue Service has advised that it interprets this penalty provision as applying only to property of a delinquent taxpayer in the possession of a third party and not to property in the taxpayer's possession. In the Service's view, this interpretation is consistent with Section 6332(c)(1) of the Code, which applies only to

To be sure, *Biswell* and *Colonnade Catering* turn in part on the fact that firearms and liquor dealers have implicitly consented to a detailed system of governmental regulation. But the decision in *Biswell* also reflects the Court's recognition that the gun inspection powers at issue were necessary to implement a regulatory system of crucial importance to society. Here, too, the collection of the revenues is of paramount importance. Indeed, if the Service's levy and seizure procedure is to be an effective means of collecting taxes against persons who are likely to hide or otherwise dispose of their property, unannounced levies are essential to the statutory scheme. "In this context, the prerequisite of a warrant could easily frustrate [the levy procedure]; and if the necessary flexibility as to time, scope, and frequency is to be preserved, the protections afforded by a warrant would be negligible." *United States* v. *Biswell*, *supra*, 406 U.S. at 316. Thus, the Court in *Biswell* had "little difficulty in concluding that where * * * regulatory inspections further urgent federal interest, and the possibilities of abuse and the threat to privacy are not of impressive dimensions, the inspection may proceed without a warrant where specifically authorized by statute." *Id.* at 317.

In sum, the historical rationale of *Colonnade Catering* and the practical-necessity analysis of *Biswell*

third persons, as well as with the legislative history of both subsections (c)(1) and (c)(2). See S. Rep. No. 52, 69th Cong., 1st Sess. 38 (1926); and H.R. Rep. No. 1884, 89th Cong., 2d Sess. 17 (1966). See also *United States* v. *Aetna Life Ins. Co.*, 46 F. Supp. 30, 37 (D. Conn.).

support the validity of warrantless tax-collection levy and seizure from business premises.

F. *The Conduct Of The Revenue Agents In Executing The Levy And Seizure In This Case Was Reasonable*

We have shown that the statutory procedure for warrantless tax levies and seizures of a delinquent taxpayer's property does not violate the Fourth Amendment. The question remains whether that statutory authority was validly implemented in this case in light of the forced entry into petitioner's business premises.[40] It is our position that the procedure followed here was within the Service's statutory authority and satisfied the reasonableness requirement of the Fourth Amendment.

1. In enacting the levy and seizure statute, Congress provided a mechanism by which the Treasury could enforce collection against recalcitrant taxpayers. Congress did not intend this collection procedure to be frustrated if the taxpayer placed his property behind locked doors. Indeed, if that were the case, it would be a relatively simple matter for a delinquent taxpayer to insulate himself against any forced collection procedure. Moreover, in the absence of any criminal sanction for such conduct, a delinquent taxpayer would have no reason to discharge his obligations if he thought that the Service

[40] The levy upon and seizure of petitioner's automobiles was plainly reasonable. Indeed, petitioner does not even allege (A. 121) that the agents entered any private premises much less resorted to forcible entry in asserting possession over the cars. Under these circumstances, the seizure of the automobiles from what were apparently open places did not violate the Fourth Amendment (See pp. 30-37, *supra*).

could not summarily collect the tax from his property.

Thus, Congress must have intended that a reasonable degree of force could be employed to gain access to a delinquent taxpayer's premises where necessary to accomplish a seizure of his property to collect taxes he owes. The reasonableness of an entry to make a levy and seizure depends upon whether excessive force was used in gaining entry or seizing the property.

The revenue agents acted reasonably here in using a limited degree of force to gain entry to petitioner's business premises. After their first entry into the cottage indicated that it might be a personal residence, the agents withdrew to consider further the status of the cottage. It was only after receiving information that the cottage was the business premises of the taxpayer and observing various persons removing property from the cottage, that the agents reentered the cottage and seized its contents. Thus, the agents fully adhered to the instructions in the Internal Revenue Service Manual which prohibit forcible entry into personal residences (see Appendix B, *infra*, pp. 11a-14a). Moreover, during all stages of this collection effort, the agents discussed their actions with the Regional Counsel of the Internal Revenue Service.[41]

[41] In *See*, the Court recognized that physical force might be used "within the framework of a warrant procedure" to gain entry to commercial premises (387 U.S. at 545). Since Section 6331 authorizes a levy and seizure without a warrant, the use of minimal force to gain entry to petitioner's business premises is consistent with *See*.

Finally, the agents' seizure of the books and records from petitioner's business premises did not render the levy unreasonable. When collection agents execute a levy and seizure, they are required by Section 6331 to "levy upon all property and rights to property * * * belonging to such person or on which there is a lien * * *." Since the books belonged either to petitioner, which was an alter ego of the taxpayer, or to the taxpayer himself, they were subject to seizure. As the agents testified (A. 24, 25, 60, 87-88), they seized these records in order to ascertain whether they contained any valuable assets themselves (such as stock certificates) or any information concerning the location of other assets of the taxpayer (see Pet. App. A-3).

As we discuss in greater detail at pp. 76-79, *infra*, the Court need not reach the general issue of the validity of the seizure of the books and records or the specific question whether the warrantless inspection of the books and records violated the Fourth Amendment because the Service returned the originals, destroyed its photocopies, and made no use of any information obtained from the documents. The propriety of such a seizure and ensuing "search" may best be resolved in a case in which the Internal Revenue Service continues to hold the records or makes evidentiary use of the seized records.

At all events, we suggest that such an examination is an appropriate incident of the levy power if there is a reasonable basis to believe that the records will disclose the existence of other assets of the

taxpayer. Cf. Section 6333, which authorizes the Service to demand the production of any books and records containing evidence relating to property subject to levy. If the seizure of the books and records was an appropriate and lawful exercise of the levy, the Service could examine those documents and use whatever information it obtained from them. See *Abel* v. *United States*, *supra*, 362 U.S. at 238; *Davis* v. *United States*, *supra*, 328 U.S. at 590.

2. The use of reasonable force in gaining entry to private premises does not *per se* violate the Fourth Amendment. *Miller* v. *United States*, 357 U.S. 301; *Sabbath* v. *United States*, 391 U.S. 585. See also *Semayne's Case*, *supra*, 3 Coke's Rep. (Fraser ed.), Part V, fol. 91a, 77 Eng. Rep. 194 (1604).

Here, the agents engaged a locksmith to open the door as the only feasible and nondestructive means of gaining entry to seize the property contained therein that they reasonably believed to belong to Norman. The agents' conduct was reasonable and the force they employed was the minimum necessary to perform their statutory duty of collecting delinquent taxes. See ALI, Restatement of the Law of Torts 2d, *supra*, § 208, comments *g* and *i*.

In sum, we submit that the reasonableness of each levy and seizure of a delinquent taxpayer's property conducted pursuant to 26 U.S.C. 6331 must be tested on its facts. The seizure may be overturned only if the agents have exceeded the bounds of their authority in the amount and type of force used. There is no showing that the agents acted arbitrarily in this

case or otherwise conducted themselves unreasonably in seizing the taxpayer's property from petitioner. Thus, the agents satisfied the requirement of reasonableness of the Fourth Amendment.

II. At All Events, Petitioner Is Not Entitled To The Relief It Seeks

The previous arguments have demonstrated that: (1) the Fourth Amendment does not require a warrant for the otherwise reasonable levy and seizure of a delinquent taxpayer's property from business premises or public streets and (2) the agents' conduct in executing the levy and seizure in this case was reasonable. Because the court of appeals upheld the validity of the levy and seizure, it did not reach the question of petitioner's requested relief, and there is no reason for this Court to do so either. But however the Court decides the Fourth Amendment issues, petitioner is not entitled to the relief it seeks. Thus, at all events, the court of appeals correctly reversed the judgment of the district court even if its Fourth Amendment holding was in error.

Petitioner's second amended complaint contained the following specific prayers for relief (A. 123-124):

A. Petitioner sought an order directing the revenue agents to return or destroy any photocopies of its books and records seized from its business premises (A. 123).[42] We are advised by the Internal Rev-

[42] By the time petitioner had filed its second amended complaint, the Service had returned the originals of the documents (A. 122).

enue Service that it had done so prior to its appeal of the district court's judgment in the court of appeals. This aspect of petitioner's requested relief is therefore moot.[43]

B. Petitioner further requested the district court to order the revenue agents to return the automobiles that they levied upon and seized (A. 123). However, even assuming the invalidity of the levies, the government now holds the automobiles lawfully pursuant to the judgment of the court of appeals which ordered the government's liens foreclosed in accordance with its counterclaim against petitioner (Pet. App. A-12 to A-13). Thus, the effect of the court of appeals' judgment was to transfer the ownership of the automobiles to the United States. See Section 7403(c) of the Code. That court upheld the Service's determination that petitioner was the alter ego of the taxpayer Norman so that the automobiles held in the name of petitioner in fact belonged to Norman. It is well settled that the exercise of the government's superior property interest in the auto-

[43] After the briefs were filed in the court of appeals, government counsel first learned that the Federal Bureau of Investigation had made copies of several of the documents seized from petitioner's business premises. These documents included a Christmas list of the taxpayer and an address list of various business associates, which the Bureau apparently used in order to attempt to discover his whereabouts after he had become a fugitive from justice. The government advised the court of appeals that the Bureau had agreed to destroy the photocopies in its possession. We are advised by the Bureau that it has destroyed these photocopies.

mobiles by virtue of the foreclosure of its tax lien does not violate the Fourth Amendment. See, *e.g.*, *Cancino* v. *United States*, 451 F.2d 1028, 1033 (Ct. Cl.); *Ginsberg* v. *United States*, 408 F.2d 1016, 1017 n. 1 (C.A. 9); *Field* v. *United States*, 263 F.2d 758, 762 (C.A. 5), certiorari denied, 360 U.S. 918; *Carlo* v. *United States*, 286 F.2d 841, 848-849 (C.A. 2), certiorari denied, 366 U.S. 944; *Welsh* v. *United States*, 220 F.2d 200, 202-203 (C.A.D.C.)." The theory of these cases is that even if property is seized in violation of the Fourth Amendment, the subsequent imposition of a federal tax lien upon such property (and its foreclosure by court judgment) does not violate the Fourth Amendment. Indeed, if the automobiles were returned to petitioner, the existence of the outstanding assessments would subject them to immediate re-seizure. Under these circumstances, petitioner is not entitled to a return of the automobiles even if they were illegally seized.

C. Petitioner also sought an order suppressing all evidence obtained from the seized books and records and an order forever barring the agents from obtaining such evidence by any means (A. 123). As we have pointed out in our brief in *United States* v. *Janis*, No. 74-958, argued December 8, 1975, there

---

[44] Petitioner also asked the district court for an order declaring that it was not the alter ego of Norman (A. 123). The court of appeals held that petitioner was such an alter ego (Pet. App. A-6 to A-8) and this Court denied certiorari insofar as the petition sought review of that question (A. 14).

are circumstances in which the exclusionary rule would be an inappropriate sanction in civil tax cases, especially where, as here, there was no evidence that the agents acted maliciously (see Pet. App. A-9) or that they did anything other than follow accepted Internal Revenue Service practices and procedures. But quite apart from that question, the suppression sought by petitioner is premature.

There are no proceedings presently pending or contemplated in which the government intends to use any information from the documents seized from petitioner. But if proceedings eventually arise in which the government attempts to use the documents or information from the documents seized from petitioner's business premises, petitioner or other persons involved may then seek to suppress such evidence. Until that time, suppression is premature. See, *e.g.*, *Meister* v. *United States*, 397 F.2d 268, 269 (C.A. 3); *Hill* v. *United States*, 346 F.2d 175, 178 (C.A. 9); *Roberts* v. *United States*, 363 F. Supp. 37, 38-39 (C.D. Cal.); *Chakejian* v. *Trout*, 295 F. Supp. 97, 102-103 (E.D. Pa).[45]

D. Petitioner further requested an order suppressing as evidence the seizure of the automobiles and barring forever their further seizure (A. 124). As-

---

[45] Moreover, petitioner has not demonstrated the irreparable injury required to support a motion to suppress evidence on equitable grounds in advance of any proceeding under Rule 41(e) of the Federal Rules of Criminal Procedure. See *Hunsucker* v. *Phinney*, 497 F.2d 29, 34 (C.A. 5), certiorari denied, 420 U.S. 927; *Centracchio* v. *Garrity*, 198 F.2d 382, 386 (C.A. 1), certiorari denied, 344 U.S. 866.

suming *arguendo* that the automobiles have some evidentiary value, petitioner's suppression request is likewise premature. Moreover, even assuming the invalidity of the Service's original levy on the automobiles, the Anti-Injunction Act, 26 U.S.C. 7421(a), which forbids suits to restrain the assessment or collection of any tax, would prohibit the district court from barring the Internal Revenue Service from levying upon the automobiles.[46]

E. Finally, petitioner sought general and punitive monetary damages against the individual revenue agents who conducted the levy against its property (A. 124). In support of its claim, petitioner relies (Br. 34-35) upon *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U.S. 388. In that case, the Court held that there is a federal cause of action under the Fourth Amendment for damages upon proof of injuries resulting from federal agents' violation of that Amendment, but reserved the question whether federal officials have an absolute immunity. Cf. *Scheuer* v. *Rhodes*, 416 U.S. 232.

Even assuming *arguendo* the agents' conduct violated the Fourth Amendment, petitioner would not be entitled to money damages if the agents acted in good faith. The court of appeals held that there was no evidence that Agent Clayton's conduct was malicious (Pet. App. A-9). Moreover, the good faith of

[46] Petitioner's request for an order releasing all levies on its property appears (A. 124) to be based on its contention that it was not an alter ego of Norman. That issue, as we have pointed out (see n. 14, *supra*), is not before the Court.

all the agents is reinforced by the apparent fact that their conduct was in conformity with standard Internal Revenue Service procedures which are based upon this Court's decision in *Murray's Lessee* v. *Hoboken Land and Improvement Co.*, *supra*. Indeed, the court of appeals unanimously held that the levy and seizure did not violate the Fourth Amendment. Thus, that court implicitly concluded that the agents' conduct met the reasonableness standard of that constitutional provision and that they therefore acted in good faith.

Because the court of appeals held that the levy and seizure did not violate the Fourth Amendment, it had no occasion to consider the validity of a good faith defense. However, if this Court holds that the levy was an unreasonable search and seizure, we believe that the record nevertheless supports the conclusion that the agents acted in good faith. They are accordingly not liable for any damages.[47]

[47] Petitioner's principal damage claim is premised upon the alleged loss of revenue arising from the seizure of the automobiles (A. 121). Thus, even if the Court were to conclude that only the seizure of the documents violated the Fourth Amendment, petitioner would not be entitled to any damages because the record contains no proof of any injury to petitioner resulting from the temporary seizure of its documents.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

SCOTT P. CRAMPTON,
Assistant Attorney General.

STUART A. SMITH,
Assistant to the Solicitor General.

LEONARD J. HENZKE, JR.,
STEPHEN M. GELBER,
Attorneys.

MAY 1976.

APPENDIX A

Constitution of the United States:

Article I.

* * * * *

Section. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * * * *

Amendment to the Constitution of the United States:

Article IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Internal Revenue Code of 1954 (26 U.S.C):

SEC. 6212. NOTICE OF DEFICIENCY.

(a) [as amended by Sec. 89(b), Technical Amendments Act of 1958, P.L. 85-866, 72 Stat. 1606, 1665, and Sec. 101(j)(40), Tax Reform Act of 1969, P.L. 91-172, 83 Stat. 487, 530] *In General.*—If the Secretary or his delegate determines that there is a deficiency in respect of any tax imposed by subtitle A or B or chapter 42, he is authorized to send notice of such de-

ficiency to the taxpayer by certified mail or registered mail.

* * * * *

SEC. 6213. RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

(a) [as amended by Sec. 101(j)(42), Tax Reform Act of 1969, *supra*] *Time for Filing Petition and Restriction on Assessment.*—Within 90 days, or 150 days if the notice is addressed to a person outside the States of the Union and the District of Columbia, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B or chapter 42 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421 (a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

* * * * *

(c) *Failure To File Petition.*—If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a), the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the Secretary or his delegate.

* * * * *

SEC. 6215. ASSESSMENT OF DEFICIENCY FOUND BY TAX COURT.

(a) *General Rule.*—If the taxpayer files a petition with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed and shall be paid upon notice and demand from the Secretary or his delegate. No part of the amount determined as a deficiency by the Secretary or his delegate but disallowed as such by the decision of the Tax Court which has become final shall be assessed or be collected by levy or by proceeding in court with or without assessment.

* * * * *

SEC. 6301. COLLECTION AUTHORITY.

The Secretary or his delegate shall collect the taxes imposed by the internal revenue laws.

SEC. 6303. NOTICE AND DEMAND FOR TAX.

(a) *General Rule.*—Where it is not otherwise provided by this title, the Secretary or his delegate shall, as soon as practicable, and within 60 days, after the making of an assessment of a tax pursuant to section 6203, give notice to

each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

(b) *Assessment Prior to Last Date for Payment.*—Except where the Secretary or his delegate believes collection would be jeopardized by delay, if any tax is assessed prior to the last date prescribed for payment of such tax, payment of such tax shall not be demanded under subsection (a) until after such date.

SEC. 6321. LIEN FOR TAXES.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

SEC. 6322 [as amended by Sec. 113(a), Federal Tax Lien Act of 1966, P.L. 89-719, 80 Stat. 1125, 1146] PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time.

SEC. 6323 [as amended by Sec. 101(a), Federal Tax Lien Act of 1966, *supra*]. VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS.

(a) *Purchasers, Holders of Security Interests, Mechanic's Lienors, and Judgment Lien Creditors.*—The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

* * * * *

SEC. 6331. LEVY AND DISTRAINT.

(a) *Authority of Secretary or Delegate.*—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collec-

tion of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) [as amended by Sec. 104(a), Federal Tax Lien Act of 1966, *supra*] *Seizure and Sale of Property.*—The term "levy as used in this title includes the power of distraint and seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

* * * * *

SEC. 6333. PRODUCTION OF BOOKS.

If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of any books or records, containing evidence or statements relating to the property or right to property subject to levy, shall, upon demand of the Secretary or his delegate, exhibit such books or records to the Secretary or his delegate.

SEC. 6335. SALE OF SEIZED PROPERTY.

(a) *Notice of Seizure.*—As soon as practicable after seizure of property, notice in writing shall be given by the Secretary or his delegate to the owner of the property (or, in the case of personal property, the possessor thereof), or

shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

* * * * *

SEC. 6861. JEOPARDY ASSESSMENTS OF INCOME, ESTATE, AND GIFT TAXES.

(a) *Authority for Making.*—If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213 (a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof.

(b) *Deficiency Letters.*—If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 6212(a), then the Secretary or his delegate shall mail a notice under such subsection within 60 days after the making of the assessment.

* * * * *

SEC. 7403. ACTION TO ENFORCE LIEN OR TO SUBJECT PROPERTY TO PAYMENT OF TAX.

(a) *Filing.*—In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary or his delegate, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability.

* * * * *

SEC. 7426 [as added by Sec. 110(a), Federal Tax Lien Act of 1966, *supra*] CIVIL ACTIONS BY PERSONS OTHER THAN TAXPAYERS.

(a) *Actions Permitted.*—

(1) *Wrongful levy.*—If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such

property has been surrendered to or sold by the Secretary or his delegate.

* * * *

(b) *Adjudication.*—The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

(1) *Injunction.*—If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

(2) *Recovery of property.*—If the court determines that such property has been wrongfully levied upon, the court may—

(A) order the return of specific property if the United States is in possession of such property;

(B) grant a judgment for the amount of money levied upon; or

(C) grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property.

For the purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount equal to the minimum price determined pursuant to such

section or (if larger) the amount received by the United States from the resale of such property.

* * * *

SEC. 7602. EXAMINATION OF BOOKS AND WITNESSES.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

* * * * *

APPENDIX B

Internal Revenue Service Manual:

5341 General

* * * * *

(11) A Revenue Officer is not authorized to use force in the seizure of property. Thus, if the taxpayer or any other person bars the path or approach of the Revenue Officer and clearly indicates that he will use force in attempting to prevent the seizure, the Revenue Officer should withdraw and report the matter to his Group Manager.

(12) If the Revenue Officer is in the process of actually seizing the property and is physically attacked to prevent completion of the seizure and the attack continues even though the Revenue Officer discontinues the seizure, the Revenue Officer may use such force as is necessary to protect himself and stop the attack. *Also see IRM 5146.* However, excessive force should not be used by the Revenue Officer as it often becomes a close question as to when self-defense ends. Excessive force may possibly subject the Revenue Officer to proceedings for assault and battery under State law. *See LRG 835.3.*

(13) Generally, a Revenue Officer has the right to enter onto public or private premises in order to carry out his official duties. However, several qualifications or precautions, depending upon ownership and type of premises involved, should be observed.

(a) If the premises consist of a private residence owned by the taxpayer, the Revenue

Officer has the authority to enter onto the premises in the normal manner and to seek an interview with the taxpayer. He can also request permission to examine and seize whatever personal property that may be inside the residence. However, if the Revenue Officer is denied entrance, he has no authority to enter the residence. *The Revenue Officer should not attempt any entrance unless the taxpayer or another adult gives him specific permission.* If, thereafter, the Revenue Officer is requested to leave the residence, he should immediately comply.

(b) If personal property is located outside the residence but still on the private premises of the taxpayer, the Revenue Officer has authority to enter onto the premises and seize the personal property. The Revenue Officer may proceed to seize the property even though requested or demanded to leave the premises. However, if force or violence is used or threatened, the Revenue Officer should withdraw from the premises and report to his Group Manager as outlined in (11) above.

(c) If the premises are owned by a third party and the taxpayer is a leasee, for example, the operator of a business on the premises, the Revenue Officer has authority to enter the place of business and seize personal property located on the premises where the business operation of the taxpayer is being conducted.

(14) A Revenue Officer should not physically seize property from the person of the taxpayer or from the person of any other party against the individual's will. Seizure of property from the person of an individual can only

be made by voluntary compliance with a request from the Revenue Officer to the individual having possession of the property.

(15) A search warrant cannot be issued to a Revenue Officer authorizing entry upon private premises to search for property to be seized for distraint purposes. *Rule 41 of the Federal Rules of Criminal Procedure (Title 18 U.S.C.) is the sole authority for the issuance, execution, and return of federal search warrants.* That rule only authorizes issuance of warrants to search for and seize property stolen or embezzled in violation of the laws of the United States, designed or intended for use or which is or has been used as the means of committing a criminal offense, or possessed, controlled or designed or intended for use or which is or has been used in violation of Title 18, U.S.C. 957 (possession of property in aid of foreign government).

(16) In making the seizure, warning notices, Publication 34, or seizure tags, Publication 180, will be signed by the Revenue Officer and attached to the property being seized. If the taxpayer's entire business is under seizure, it will not be necessary to attach a warning notice to each item; however, a sufficient number of notices should be attached to clearly identify the property under seizure. After attaching the warning notices, the Revenue Officer should begin to inventory the property under seizure. *See IRM 5352:(4) for delay, under certain circumstances, in taking an immediate inventory.*

• • • • •

MANUAL 53G-39

SUPPLEMENT

DEPARTMENT OF THE TREASURY

Internal Revenue Service

November 24, 1975

Seizure of Assets—Revenue Officer's Right to Enter Onto Public or Private Premises

Section 1. Purpose

This Supplement provides guidance on the extent to which a Revenue Officer can go to gain entry to a taxpayer's premises in an effort to seize assets located thereon.

Section 2. Background

Recently, two questions have arisen concerning the above subject. The first is whether in the process of seizing assets, a Revenue Officer may legally remove and replace the lock assembly of the door to a taxpayer's premises. The second question is whether a Revenue Officer can force entry through a door to a multiple unit building to reach a taxpayer's assets if the taxpayer neither owns nor leases the entire building.

Section 3. Procedures

.01 If the premises being seized are the taxpayer's personal residence, the taxpayer's approval must be obtained before a Revenue Officer can legally change the lock assembly of the door to those premises.

.02 If the premises being seized are *not* the personal residence of the taxpayer, the Revenue Officer may, with or without approval of the taxpayer, change the lock assembly provided that no "physical force" is used. Physical force in this context means any "physical effort against a *person*."

.03 When the taxpayer's assets are on premises that are located within a multiple unit bulding which is neither owned nor leased by the taxpayer, the locks on the entrance(s) to the multiple unit building cannot be changed without the owner's permission. The Revenue Officer will not force entry into the building to reach the taxpayer's assets. Permission to enter without the use of force should be requested from the owner. If the owner's consent cannot be obtained, the matter should be referred to Regional Counsel for advice.

Section 4. Effect on Other Documents

This supplements IRM 5340. This "effect" should be annotated by pen and ink on the text cited, with a reference to this Supplement.

/s/ Thomas L. Davis
THOMAS L. DAVIS
Director, Collection Division

APPENDIX C

MARCH TERM—MAY 1, 1975

Before Honorable Delmas C. Hill, Honorable Oliver Seth and Honorable James E. Barrett, United States Circuit Judges

No. 74-1436

(D.C. #C-189-73)

G. M. LEASING CORP., PLAINTIFF-APPELLEE

vs.

THE UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, ROLAND V. WISE, District Director, JAMES M. LIVSEY, JOHN W. HAACKE, GLENN S. HILTON, KEITH E. FINLEY, JR., CLARK D. HOLFELTZ, JOSEPH J. WHITE, CLESSE S. HILTON, BURT C. APPLEGATE, RONALD P. HARRINGTON, TIM W. ELISON, LAWNIE C. MAYHEW, THOMAS L. HARKNESS and PHILIP J. CLAYTON, DEFENDANTS-APPELLANTS

GEORGE I. NORMAN, III, INTERVENOR

This cause came on to be heard on the record on appeal from the United States District Court for the District of Utah, and was argued by counsel.

Upon consideration whereof, it is ordered the judgment of that court is affirmed only insofar as it orders the 7000 shares of Emdeko stock returned to intervenor. The judgment is in all other respects reversed. The United States District Court for the District of Utah is directed to enter judgment in

favor of the appellants and against appellee and intervenor accordingly.

/s/ Howard K. Phillips
HOWARD K. PHILLIPS
Clerk

APPENDIX D

May Term—June 17, 1975

Before Honorable David T. Lewis, Chief Judge, Honorable Delmas C. Hill, Honorable Oliver Seth, Honorable William J. Holloway, Jr., Honorable Robert H. McWilliams, Honorable James E. Barrett, and Honorable William E. Doyle, Circuit Judges

No. 74-1436

G. M. LEASING CORP., PLAINTIFF-APPELLEE

v.

THE UNITED STATES OF AMERICA, et al.,
DEFENDANTS-APPELLANTS

v.

GEORGE I. NORMAN, III, INTERVENOR

This matter comes on for consideration of the Petition for Rehearing and Suggestion for Rehearing En Banc filed by the Appellee in the captioned case.

Upon consideration whereof, the Petition for Rehearing is denied by Circuit Judges Hill, Seth, and Barrett, to whom the case was argued and submitted.

The Petition for Rehearing having been denied by the original panel to whom the case was argued and submitted and no member of the panel nor judge in regular active service on the Court having requested that the Court be polled on Rehearing En Banc, Rule 35, Federal Rules of Appellate Proce-

dure, the Suggestion for Rehearing En Banc is denied.

HOWARD K. PHILLIPS
Clerk

By: /s/ Robert L. Hoecker
Robert L. Hoecker
Chief Deputy Clerk

☆ U. S. GOVERNMENT PRINTING OFFICE: 1976 205877 245

FOR ARGUMENT

Supreme Court, U. S.
FILED
SEP 27 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-235

G. M. LEASING CORP., et al.,

Petitioners,

v.

UNITED STATES OF AMERICA, et al.

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

RICHARD J. LEEDY
2795 Comanche Drive
Salt Lake City, Utah 84108
Attorney for Petitioners
801 583-1467

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATEMENT	2
ARGUMENT	7
THE REASONS THAT RESPONDENTS ASSERT FOR DENYING THE APPLICABILITY OF THE FOURTH AMENDMENT TO TAX SEIZURES ARE NOT VALID	7
RECENT CASES HAVE BEEN DECIDED SUPPORTING PETITIONER	21
PETITIONER IS ENTITLED TO THE RELIEF IT SEEKS	29
CONCLUSION	32

CITATIONS

Cases

Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 31

Boyd v. United States, 116 U.S. 616 (1886) 9

Bull v. United States, 295 U.S. 247 11

Chambers v. Maroney, 399 U.S. 42 19

Commissioner v. Shapiro, No. 74-744 decided March 8, 1976 .... 14, 22, 23, 24, 27, 28, 30

	Page
Coolidge v. New Hampshire, 403 U.S. 443 (1973)	10, 16
Davis v. United States, 328 U.S. 582	11
Laing v. United States, 96 U.S. Ct. 473 (1976)	23, 28
Mapp v. Ohio, 376 U.S. 643 (1961)	29
Murray's Lessee v. Hoboken Land and Improvement Corp., 18 How. 272	9, 11
One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965)	10, 30
Phillips v. Commissioner, 283 U.S. 589 (1931)	22, 23
United States v. Hall, 96 U.S. Ct. 473 (1976)	23
United States, et al, v. Janis, No. 76-958 decided July 6, 1976	29
United States v. Johnson, 333 U.S. 10	16
United States v. Martinez Fuerte, et al., No. 74-1560, decided July 6, 1976	27, 28
Weeks v. United States, 232 U.S. 383 (1941)	29
Wong Sun v. United States, 371 U.S. 471 (1963)	30

Other Authorities

Black's Law Dictionary, 4th Ed. page 1785 citing 1 Maddox Hist. Ex. Ch. 675	15
Rosenthal Jeopardy and Termination Assessments After *Laing* and *Hall*: Jeopardizing the Fourth Amendment, 31 Tax L. Rev. 317 (1976)	32

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-235

G. M. LEASING CORP., et al.,

Petitioners,

v.

UNITED STATES OF AMERICA, et al.

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

OPINIONS BELOW

The findings of fact and conclusions of law of the district court (Pet. App. A-14 to A-21), are not reported. The opinion of the court of appeals (Pet. App. A-1 to A-14) is reported at 514 F. 2d 935.

JURISDICTION

The judgment of the court of appeals was entered on May 1, 1975 (Appendix C, *infra*, pp. 16a-17a). On June 17, 1975, the court denied a petition for rehearing by G. M. Leasing Corporation and also denied its suggestion of rehearing *en banc* (Appendix D, *infra*, pp. 18a-19a). The petition for a writ of certiorari was filed on August 13, 1975, and was granted on December 15, 1975, with respect to Question 2 (A.14). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

The grant of certiorari was limited to a single question (A.14), which is:

> Whether tax agents of the United States acted illegally in seizing automobiles and documents of petitioner in violation of its constitutional rights when said seizures were made pursuant to an Internal Revenue jeopardy assessment.

STATEMENT

The respondents' statement of fact is slanted and not entirely supported by the record.

Throughout its brief, respondent implies that the taxpayer in this case, George I. Norman, Jr., was a delinquent and recalcitrant taxpayer who would take any steps to avoid paying his just taxes. Such is simply not the case.

Respondents began their scenario by implying that

the reason for the revenue service audit of Mr. Norman was based on his conviction of a felony of aiding and abetting the willful misapplication of bank funds, (Res. brief, page 3). In truth and in fact, Mr. George I. Norman, Jr., the taxpayer, had been audited for many years from 1964 until 1971 because he had substantial income and substantial deductions (R. Vol. I, pg. 25. As to substantial deductions, see A-26). Internal Revenue audits were more or less an ongoing occurrence in the taxpayer's business, rather than a result of the events which respondents have pointed out in its brief.

Throughout its brief, respondents state that the taxpayer was uncooperative and the agent was required to make a jeopardy assessment purely on third-party sources. In so asserting, and again attempting to distort the view of the taxpayer, Norman, respondents state:

> "In conducting his audit, Clayton received no information or cooperation from Norman and, therefore, had to rely upon third-party sources, including the records of stock brokerage firms." (Res. brief, page 4).

There is absolutely no evidence that agent Clayton ever requested assistance from the taxpayer or his representatives who had filed powers of attorney with the Internal Revenue Service. No summons were ever issued; (R. Vol. I, pg. 14), no subpoenas were ever served. The inference is just as clear that the election to make his audit from third-party sources was Internal Revenue agent's own election. He proceeded to do his audit,

much to the consternation of the taxpayer, by contacting business associates and brokerage firms with whom the taxpayer did business.

In trying to stretch the taxpayer's image from that of a reluctant or non-cooperative taxpayer to a taxpayer who actively hid his assets in an attempt to defeat collection, the respondents state:

> "Taxpayer's attempt to outwit the system consisted of failing to file returns, refusing to cooperate with an audit and seeking to defeat collection by concealing some of his assets in a sham corporation, such as petitioner" (Res. brief, page 23).

Respondents have never produced one iota of evidence that Norman's assets, standing in his own name, are not sufficient to pay the taxes due and owing. There is no evidence that the taxpayer has transferred all of his assets into "sham corporations". It might be noted that the assets of petitioner were originally seized by respondents not only on the basis that petitioner was an alter ego of George I. Norman, Jr., but also on the basis that it was a transferee (A. 71-72). The Internal Revenue Service was unable to produce any evidence that the taxpayer was insolvent or transferred his assets to petitioner for insufficient consideration and, therefore, the claim that petitioner was a transferee was dismissed and was not raised on this appeal. At any rate, to allege that the collection of taxes was in jeopardy because taxpayer had hidden all of his assets in sham corporations is simply unsupported by the evidence.

In an attempt to support their jeopardy determination the respondents imply that the Normans or their agents were attempting to hide propery from the Internal Revenue Service after the assessment (See brief on page 10). They assert that persons were removing boxes of material from the cottage office used by Norman and petitioner. The respondents state:

> "because these events indicate unknown persons were putting property believed to belong to Norman beyond the reach of the Internal Revenue Service, collection officers decided to seize the cottage, etc." (Res. brief, page 10).

The implication that Norman had anything to do with the removal of assets from the "cottage" is completely unsupported by the record. The inference is just as clear that the revenue agents who apparently were keeping the cottage under surveillance, (See Res. brief, page 10), observed a burgulary occuring and failed to take any action to prevent it.

The respondents assert that there was a danger posed to the collection of taxes because of Norman's fugitive status. Again, the respondents failed to prove and there is no evidence in the record that the taxpayer did not leave ample assets behind with his family to pay any taxes which were justly due and owing. In fact, large holdings of real estate were liened by the respondents. If Norman were a fugitive, he could not very well conceal the assets he left behind.

Respondents, in their statement, acknowledge that

Norman paid $280,000 in taxes for the year 1970, (n reality, the sum was closer to $290,000) (A-27). Then in attempting to support the image that the taxpayer Norman would not pay his tax and that collection was in jeopardy, respondents assert that Norman submitted to the Internal Revenue Service a check that was later dishonored for $405,125 in payment of his 1971 tax liability. For support of such assertion, respondents cite defendants' exhibit 11 (A-103). A reading of the record will show that defendant's exhibit 11 or A-103 was never received in evidence and that respondents assertion is, therefore, unsupported by the record. (R. Vol. I, pg. 137-139).

Respondents then try to transfer the image of the recalcitrant or delinquent taxpayer from Norman to his wife by saying that she, after being informed of the jeopardy assessment, and demand for payment being made, refused to pay the tax assessments (Res. brief, page 5). Such is simply not true. Mrs. Norman, being merely a housewife, and not accustomed to the business world nor the business of her husband, merely suggested to the agents that they should speak to her husband's attorney rather than her (A-56). Rather than speak to her attorney, the Internal Revenue Service agents merely began to seize assets.

The image attempted to be portrayed by the respondents, that the taxpayer, George I. Norman, Jr., was a delinquent and recalcitrant taxpayer who would take any steps to defeat collection of tax is a distortion. Although petitioner does not condone the fugitive status

of Norman, nor would petitioner suggest that Norman would pay more than was justly due and owing, petitioner believes that a fair statement of the facts should be presented to the Supreme Court. Norman was a businessman who made a very substantial income. He also had extremely high deductions and business expenses. He had always paid his taxes, but had been audited for many years by the Internal Revenue Service. In fact, the same agent of the Internal Revenue Service, Phillip Clayton, made the audits from 1964 to 1971. And it is based upon this premise that petitioner would suggest that the Court disregard the respondent's slanted and distorted statement of fact in favor of the petitioner's statement in its opening brief.

ARGUMENT

THE REASONS THAT RESPONDENTS ASSERT FOR DENYING THE APPLICABILITY OF THE FOURTH AMENDTO TAX SEIZURES ARE NOT VALID.

The respondents put forth four arguments to support its position and the Fourth Amendment is not violated when the Internal Revenue Service seizes property pursuant to a jeopardy assessment. Petitioner will rebut each one of these propositions.

Respondents first argument is: that this court has previously sustained the validity of such seizures and, therefore, on the basis of state decisis and the rationale of previous cases, such seizures should be upheld.

However, respondent fails to distinguish between a seizure pursuant to a normal assessment and a seizure pursuant to a jeopardy assessment. It is petitioner's position that a taxpayer or a person in petitioner's status is entitled to either a hearing or an independent magistrate's decision prior to the seizure of his property. Petitioner would refer the court to the authority cited in support of this proposition in its opening brief. Assuming that Fifth Amendment due process requires some sort of a hearing before a person may be deprived of his property, or, at least, immediately thereafter, and that generally the Fourth Amendment requires an independent magistrate's determination of probable cause before a seizure. Petitioner contends that there is great distinction between a seizure pursuant to a normal assessment and a seizure pursuant to a jeopardy assessment. Assuming the normal assessment situation, the taxpayer generally has had an opportunity to confer with the Internal Revenue Service concerning his taxes, and assuming that such conference has been unproductive or uncompromising, thereafter the taxpayer is sent a notice of deficiency which the taxpayer may contest in tax court and receive a tax court determination and no seizure would occur until after these events. Therefore, in the normal situation, the taxpayer has ample notice and opportunity for hearing, not only within the system, but by the tax court. However, in the jeopardy situation, the seizure takes place immediately, and there is no notice with the exception of the simultaneous demand for payment and seizure of assets, nor is there an opportunity for a hearing.

Respondents assert that the case of *Murray's Lessee v. Hoboken Land and Improvement Corp.*, 18 How, 272 contains this court's support of a proposition that a tax seizure does not violate the Fourth Amendment. Petitioner contends that the *Murray's Lessee* situation is more close to the normal tax assessment situation where there is notice and opportunity for hearing. The distress warrant issued by the Treasury in the *Murray's Lessee* case was only issued after a hearing and decision and judgment and notice of sale. Such a case can hardly be supportive of the jeopardy situation where properties are taken without notice.

The second case relied upon by the respondents, *Boyd v. United States*, 116 U.S. 616 (1886) is also distinguishable. That case was treated in petitioner's opening brief. The Court's language in the *Boyd* case, as pointed out in the opening brief, supports the petitioner's position, rather than respondent's position. The Court in *Boyd* stated, "it is our opinion, therefore, that a compulsory production of a man's private papers, . . . to forfeit his property is within the scope of the Fourth Amendment to the Constitution in all cases in which a search and seizure could be . . . ." (116 U..S at 622). This statement brings to mind the situation in the instant case where the revenue agents searched the taxpayer's and petitioner's office for the stated purpose of seizing records to find taxpayer's property (A. 24-25).

Respondents then attempt to gain support from recent cases of this Court regarding the search and seizure of automobiles. It should be recalled that this

case also involves the seizure of several luxury automobiles as well as the corporate records of petitioner. Respondents cite several of this Court's cases (see page 34 of Res. brief), to support the proposition that there is less expectation of privacy in an automobile than in a home and, therefore, there is a "constitutional difference" between a house and a car. While the respondents would not quarrel with this position with regards to a search or examination for evidence, petitioner cannot see the difference or a valid distinction between the two with respect to a seizure or dispossession of the owner of his interest therein. Respondents attempt to assert that a seizure by tax agents merely deprived a person of his proprietary interest in the property seized and there is no invasion of privacy interest protected by the Fourth Amendment. (See respondent's brief, page 35). Such a position cannot be supported. Obviously, th right of privacy, includes the right to be let alone from government interference and must also include the right to be secure in one's property and not have it taken, as well as merely searched. See, *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965); *Coolidge v. New Hampshire*, 403 U.S. 443 (1973).

As further rationale for its position, respondents attempt to argue that by virtue of the tax lien the government itself has a proprietary interest in the property of taxpayer. Therefore, they argue, that the merely taking of possession is to protect its own proprietary interest, and, therefore, further leeway should be given to the government and no warrant required (Res. brief,

page 35-36). The respondents cite *Davis v. United States*, 328 U.S. 582.

Petitioner again responds that such a "bootstrap" doctrine is not acceptable in light of constitutional standards. It is not only the seizure, but the jeopardy assessment which allowed the seizure that petitioner contends violates the Fourth Amendment. It is no answer to such to say that because the jeopardy assessment creates a lien, therefore, the seizure is proper unless one examines the validity of or probable cause for the jeopardy assessment either by hearing or by an independent magistrate's finding of probable cause.

Respondents assert that *Bull v. United States*, 295 U.S. 247 supports its position and the holding in *Murray's Lessee, supra* (Res. brief, page 38). However, the *Bull* case points out that prior to the seizure or retention of property by the government, the taxpayer normally has an administrative agency to which he may turn prior to assessment and normally the taxpayer is given certain notice of the amount due at a date prior to its due date. See *Bull v. United States, supra* at 259-260.

The respondents assert that the decision of the United States Supreme Court and other federal courts favoring the Internal Revenue Service are based upon the rationale that

> "the very existence of government depends upon the prompt collection of the revenues. (Res. brief, page 38) . . . And if as those decisions

> indicate, the collection of taxes by summary administrative proceedings without a preseizure judicial hearing is constitutionally justified because of the government's urgent need to secure its revenue." (Res. brief, page 39).

Petitioner agrees that this rationale is often repeated in tax cases. Petitioner, however, would take issue. In this day and age of huge budget deficits and the theory of deficit spending to encourage the economy, petitioner contends that there is no "urgent need" for the government to hastily collect its revenue. At least, the need of the government to collect its revenues is no more urgent than the government's need to seize evidence from narcotics offenders, gamblers, or any other criminal suspect whom the Fourth Amendment protects.

It is therefore, petitioner's position that previous United States Supreme Court cases do not support respondents' position with respect to seizures pursuant to jeopardy assessment.

Respondents second argument, sub-paragraph (c) of respondents brief, asserts that the history of England and America would support warrantless seizures of delinquent taxpayer's property without regard to the Fourth Amendment. In rebuttal to this proposition of respondents, the petitioner will rely on its opening brief and further, simply state that a history of long standing abuse does not necessarily make it right.

Respondents third argument in sub-paragraph (d) of its brief is that the Fourth Amendment was not intended to prohibit general seizures of property without warrant, hearing or notice for tax purposes. For an opposing view regarding the framer's intent, petitioner refers the Court to its opening brief.

Respondents do admit that the Fourth Amendment was intended by its framers to prohibit general writs of assistance (Res. brief, page 55). Petitioner contends there is very little difference between a general writ of assistance and a jeopardy assessment together with a lien and levy on all taxpayer property and seizure pursuant thereto.

In an attempt to distinguish between writs of assistance and a tax levy, respondents in their brief state:

> "The vices of the writs of assistance which he described bear no resemblance to the collector's seizure of a taxpayer's property. Unlike the broad sanctions for investigatory searches conferred by writs of assistance, a tax levy is not investigatory in nature, but proceeds upon the existence of a specified data which the taxpayer is well aware, since demand for payment has already been made upon him. Moreover, the collector does not act with unbridled discretion, but is empowered to seize only an amount of properties sufficient to satisfy the debt." (Res. brief, page 58).

If such were true, the respondents position may have some substance. But in reality such a statement is not true. While a tax assessment is definite in amount, the value of property seized is often difficult of exact ascer-

tainment. In the present case, the Internal Revenue Service has seized over five luxury automobiles of petitioner, real estate, boats, and other personalty of taxpayer. As yet, no dollar value has ever been placed on this personalty to determine if the amount of the tax assessment has been reached.

Additionally, tax assessments such as in this case are often so high they bear little relationship to the taxes due and owing. Petitioner recognizes the holding in *Commissioner v. Shapiro*, No. 74-744 (March 8, 1976) allowing the taxpayer whose property has been seized to challenge whether any basis in fact, underlies the assessment. Such a limited challenge is not sufficient in a case such as the instant case. The 1970 tax assessment in the instant case showed liability of $280,000. Penalties and interest were assessed on that amount at $120,305.75. The total 1970 assessment was $406,099.37. The assessment has no relation to the amount due. Petitioner had paid $290,000.00 for which he had been given no credit. Substantial income was incorrectly added (A-27). No expenses or deductions allowed (A-26). Penalties and interest were compounded as if no payment was made. Consequently, the actual amount due was very small; yet thousands of dollars in value of real estate, luxury automobiles and other assets were seized.

It is difficult to rationalize the respondents' statement that the seizure was not investigatory at page 58 of its brief with page 74 wherein respondents state:

> "As the agents testified . . . they seized these records (petitioner's records) in order to ascertain whether they contained any sizable assets themselves (such as stock certificates) or any information concerning the location of other assets of the taxpayers."

How can respondents in good faith contend that the seizure was not investigatory when they themselves assert that one of the items that was seized was for the purpose of attempting to locate other assets of petitioner. Also, as was pointed out in the opening brief (page 17), Internal Revenue Service Intelligence agents participated in the seizures and the F.B.I. was made privy to the records seized.

On page 65 of respondents' brief, they assert:

> "Finally, the Court has explained the requirements for a judicial warrant, particularly describing the thing to be seized . . . but this principle has little force in a case where the collection agents are directed by Section 6331 of the Code to 'levy upon all property and rights to property' . . . beloning to such a person on which there is a lien . . . ."

How much more general can a writ of assistance be than the tax levy? The ancient writ of assistance, which respondents admit was underlying the prohibitions of the Fourth Amendment is a form of process issued by a Court to transfer the possession of property to enforce the payment of the King's debt or due and is issued without notice. See *Black's Law Dictionary*, 4th Ed. page 1785, citing 1 Maddox Hist. Ex. Ch.

675. Petitioner sees little distinction between the jeopardy assessment and seizure and the writ of assistance which respondents admit were prohibited by the Fourth Amendment.

Respondents' fourth and final argument against the Fourth Amendment applicability is that the reasons underlying the search warrant are not present in the jeopardy assessment tax seizure situation.

Petitioner argued in its main brief that the same reasons underlying the requirement for a search warrant are especially present in the situation of property seizure pursuant to a jeopardy tax assessment. As pointed out in the opening brief, one person was controlling in the entire events leading from assessment, jeopardy recommendation, recommendation that the petitioner was the alter ego of taxpayr and, finally the seizure (pages 29, 30, 31 of opening brief). Petitioner alleges that this particular agent acted with malice and the trial court agreed, although the appellate court reversed. There can be no question that the Internal Revenue Service agent was, at least, caught up in the "competitive business" of the enforcement of tax laws. It was this similar situation which the United States Supreme Court discussed when asserting the need for a detached and neutral magistrate's judgment rather than one who is caught up in the "competitive business" of law enforcement. *Coolidge v. New Hampshire, supra,* at 494 quoting *United States v. Johnson*, 333 U.S. 10.

Respondents contend that the situation in the in-

stant case presented exigent circumstances of the type which would normally dispense with the requirment of a search warrant. Respondents cite three separate facts which it claims produces those exigent circumstances. First, respondent asserts that the taxpayer refused to cooperate with an audit, (Res. brief, page 61). As pointed out in this reply brief's statement of fact, there is absolutely no evidence that the taxpayer was ever requested to cooperate or assist in the audit and that, in fact, the use of third party records by the Internal Revenue Service agent was his own election, rather than requesting assistance from the taxpayer.

Secondy, respondents point out that the taxpayer had concealed some of his assets in petitioner, a sham corporation. Petitioner presumes that such a statement, while completely at odds with the trial court's finding, may be in accord with the Tenth Circuit's statement that the petitioner had no separate existence apart from the taxpayer. Petitioner does quarrel with the statement that taxpayer concealed his assets and that petitioner was a "sham" corporation. Petitioner was a 'start up" corporation who had yet to commence business (see petitioner's opening brief, pages 10 and 11). While taxpayer transferred some assets to petitioner, there is no evidence that he "concealed" those assets or that G. M. Leasing did not pay valuable consideration therefor. Be that as it may, it is again pointed out, as it was in the statement of facts, that there is absolutely no evidence in the record that the taxpayer does no have sufficient assets available to satisfy his just taxes without the assets of petitioner corporation.

Finally, the third argument respondents give for claiming exigent circumstances is the fact that the taxpayer is a fugitive. The petitioner would think, on the contrary, that if a taxpayer were not present, he would have little ability to hide his assets.

With respect to the exigent circumstances claim, the respondents again bring out that material was removed from the building during the evening prior to the day of the seizure. Again, it must be asserted that there is absolutely no evidence that petitioner or taxpayer had anything to do with the removal of property from the premises that was seized as distinguished from the Internal Revenue Service observing a burgulary.

Respondents argue because of the above three facts, they had insufficient time to obtain a warrant. That argument is nonsense. Taxpayer's fugitive status had occurred weeks before the seizure. Taxpayer's alleged non-cooperation had proportedly been occurring months before the seizure. The removal of boxes from petitioner's and taxpayer's offices occurred two evenings before the date of seizure (A. 82-83) There was ample time to obtain a detached and neutral determination.

Next, respondents claim that exigent circumstances were present because of the movable nature of taxpayer's and petitioner's property (See page 62 of Res. brief).

This Court has spoken of dispensing of a search warrant and the delay in obtaining a warrant when the evidence is movable and easily destroyed. This occurs primarily in the search of car cases which are relied

upon by respondents. However, it is the evidence or the contraband that may be lost during the delay in obtaining a warrant, not the car. See *Coolidge v. New Hampshire*, 403 U.S. 443, at 460 (1971); citing *Chambers v. Maroney*, 399 U.S. 42. Respondents cannot seriously contend that petitioner would destroy its own luxury automobiles worth many thousands of dollars. These automobiles consisting of Stutz's and Rolls Royces and one Jaguar are difficult to sell because of the purchase price involved. Assuming that respondents were so fearful, their lien would protect them from transfer. Since automobiles are transferred by title, a lien could effectively be filed. Then, if respondents feared the concealing of the cars, they would simply have to summon or subpoena a corporate officer or family member who, under oath, would be required to disclose its whereabouts. Respondents argue that the summons method would not work in this case because Norman was a fugitive; however, it is clear he became a fugitive without taking the cars with him. Therefore, it would be the corporate officers or Norman family members who would be knowledgable about the whereabouts of the automobiles.

Respondents, after deciding that there were exigent circumstances, goes on to explain the three constitutional requirements laid down by this court for searches in the inspection context. They list: the demand of privacy, the public need for warrantless searches, and the standards to be employed in issuing the warrants. They then argue (Res. brief, page 66), that all three criteria are met in the tax levies and seizure situation.

Petitioner contends the opposite. Again, the respondents have argued that the petitioner's interest in the automobiles seized is a proprietary one, rather than a privacy interest which the Fourth Amendment protects. As pointed out before the right to privacy or the right to be let alone includes the right not to have ones' property interfered with or taken as well as merely examined.

The second criteria pointed out by the respondents is whether or not the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the suit. Again, petitioner quarrels with respondents view that they had insufficient time to obtain a warrant. In the present case the revenue officer who entered the offices of petitioner on March 21, 1973(A-19), and returned two days later and made the seizure that is the subject matter of this lawsuit (A-23). It certainly seems that sometime during those two days there would have been sufficient time to obtain a warrant without frustrating the purpose behind the search. The third consideration discussed in *Camera* and outlined by the respondents' brief (pages 68 and 69 of Res. brief), was the standards for determining whether or not to issue warrants. In connection with this matter, the respondents state:

> "Thus, the only factors for deciding whether to make such a levy is whether the taxpayer's refused to meet his obligation and whether he has property which could be used to satisfy the outstanding assessments. There are accordingly, almost no questions of disputed fact in a tax seizure with respect to which the antecedent evaluation of a magistrate would be required."

Respondents' position is almost so broad that everyone would be subject to seizure. Petitioner suggests that there are several matters which an independent magistrate should examine and evaluate:

(1) Whether or not there is probable cause to believe there is a deficiency in the taxpayer's taxes,

(2) Whether or not the collection of those taxes is in jeopardy.

(3) In this case, whether or not the entity having ownership of such assets is an alter ego, nominee, or transferee of taxpayer,

(4) Whether the assessment is so excessive to bear any relation to the taxes due and owing.

Contrary to respondents' position, the requirements and rationale of the Fourth Amendment are particularly applicable to jeopardy tax seizures as much as any other search and seizure.

RECENT CASES HAVE BEEN DECIDED SUPPORTING PETITIONER.

Since the grant of certiorari in this case, several cases have been decided in the United States Supreme Court that have some bearing on the instant case.

On January 13, 1976, the Supreme Court decided the case of *Laing v. United States*, which was consolidated with *United States v. Hall*, 96 U.S. Ct. 473

(1976). That case involved two separate situations of jeopardy assessment and subsequent seizures. The majority of the Supreme Court held with the taxpayer in each instance and ordered a return of the taxpayer's property on the theory that the Internal Revenue Service had failed to follow the proper procedural steps involved in a jeopardy assessment seizure. Mr. Justice Brennan in a concurring opinion applies the due process clause of the Fifth Amendment to jeopardy tax seizures. As Justice Brennan correctly points out, due process requires a hearing prior to a seizure unless the governmental interest at stake justifies postponing the hearing until after the seizure. If such a governmental interest is at stake and the seizure occurs prior to the hearing, then the hearing must be afforded promptly. Mr. Justice Brennan observes that the hearing provided by the assessment and statutory period for filing in tax court and subsequent trial do not meet the constitutional requirements of a prompt hearing. Mr. Justice Blackmun with whom Chief Justice Burger and Mr. Justice Rehnquist joined in dissenting on the basis that due process does not apply to require a hearing because of the overriding governmental need for prompt action in collection of taxes. Again, petitioner would urge the Court to reexamine the rationale of the government's urgent need for the prompt collection of revenue. This rationale has little validity or weight in this day and age.

The second pertinent tax case is *Commissioner v. Shapiro*, decided March 8, 1976. The majority of the Supreme Court in *Shapiro* distinguished the facts in *Phillips v. Commissioner*, 283 U.S. 589 (1931), which

was relied upon by the dissenting opinion in *Laing* and *Hall*. In *Shapiro*, the majority stated:

> "It is true that in *Phillips v. Commissioner supra*, this Court sustained against constitutional challenge, the statutory scheme created by congress for the litigation of tax disputes and in so doing referred both to the jeopardy assessment provision and the anti-injunction act . . . . However the *Phillips* case itself did not involve a jeopardy assessment and the taxpayer's assets could not have been taken or frozen in this case until he either had, or waived his right to a full and final adjudication of his tax liability before the tax court (then the Board of Tax Appeals)."

The United States Supreme Court in *Shapiro* decided that although the anti-injunction act would normally prohibit a taxpayer from suing the Internal Revenue Service, the taxpayer does have the right, in a jeopardy assessment and seizure situation, to challenge whether or not there is a basis in fact for the assessment. The Court stated:

> "Finally, it seems apparent that if the facts do not even disclose 'probable cause' (citing cases) . . . to support the assessment, the government would certainly be unable to prevail at trial. Thus the *Williams Packing* is consistent with the applicable constitutional standard."

Thus, it seems that the Supreme Court has attached constitutional standards to the jeopardy seizure of property and recognized the need for a prompt post-judicial hearing to determine whether or not the seizure had any basis in fact.

The instant case involves the identical situation as in the *Shapiro* case, although that question is not involved in the present grant of certiorari. In *Shapiro*, the government refused to answer interrogatories concerning the basis underlying the tax assessment. The Supreme Court said that they must so answer to determine whether or not there is a basis for the assessment and, if not, the anti-injunction act would not apply. In the present case, petitioner proceeded by way of deposition, rather than interrogatories and deposed the witness Roland Wise, who is the Director of the Internal Revenue for the State of Utah. The following interchange occurred:

> Q. And when did this assessment first come to your attention?
>
> MR. ANDOLINO, (Government's Attorney): I'll object to that question on the grounds it is immaterial and irrelevant to any issue presented in this case and not reasonably calculated to lead to admissible evidence insofar as assessments made against George and Frances Norman are conclusively presumed to be valid in an action for the return of property allegedly, wrongfully seized by the provisions of Section 7426 (c) of the *Internal Revenue Code* of 1954.
>
> Further, insofar as such questions seek disclosure of Federal tax liability of a third party not involved in this suit, said information is privileged, pursuant to the provisions of Section 7213 (a) of the Internal Revenue Code.

(It is anamolous to note that the government would refuse to disclose information concerning the tax liability of George I. Norman, Jr., on the grounds that he was a third party not involved in this suit, but would seize all of his property on the grounds petitioner was his alter ego.)

> I will therefore instruct the witness not to answer that question.
>
> MR. LEEDY: For the purpose of the record, may I point out that the suit is also for restraint of collection of taxes, which my understanding of the standard nut case indicates that an arbitrary assessment is grounds to give a Federal District Court jurisdiction.
>
> I also further point out for the record that Dr. Fred Norman is present, who has the power of attorney for George I. Norman, Jr., and would waive, right now, any privilege that George I. Norman, Jr., has to disclosure of that.
>
> Is that correct, Dr. Norman?
>
> DR. NORMAN: Indeed so.
>
> MR. ANDOLINO: Can we go off the record for a minute?
>
> (Whereupon counsel discussed the matter off the record.)
>
> * * * *
>
> MR. ANDOLINO: The government takes the position in its Motion to Strike that the al-

leged jurisdiction of this action is 7426, which is a suit for wrongful levy. Under 7426, the issue which can be brought before the Court is very narrow, in that it only determines the ownership of the property involved. There has been no other basis for jurisdiction stated. Insofar as an injunction, the injunctive relief would be specifically prohibited by Section 7421 (a), *Internal Revenue Code* of 1954.

Q. (By Mr. Leedy) Your answer, sir?

MR. ANDOLINO: I have instructed the witness not to answer.

Q. (By Mr. Leedy) Are you not going to answer under counsel's advice?

A. That's correct.

Q. Would you also refuse to answer any questions concerning the assessment of taxes against George I. Norman, Jr.?

A. That's correct.

Q. Did you, Mr. Wise, make a determination that the collection of taxes against George I. Norman, Jr., was in jeopardy.

MR. ANDOLINO: I will repeat my objections stated before, and instruct the witness not to answer.

. . . .

Q. (By Mr. Leedy) Would any questions I asked you regarding the determination of whether or not the collection of taxes was in jeopardy be the same?

MR. ANDOLINO: I have instructed the witness not to answer the question.

Q. (By Mr. Leedy) For the record, what is the answer?

A. I will not respond to that on the advice of counsel.

Q. Now, would your answer with respect to all questions concerning the determination of jeopardy on the collection of taxes against George I. Norman or Frances M. Norman be the same?

A. Yes, I would not answer on advice of counsel.

(Deposition of Roland V. Wise, pages 3-5.)

Thus, the very identical situation which the court upheld the taxpayer in *Shapiro* was present in the instant case.

Several cases were decided last term concerning the Fourth Amendment and the requirement for search warrants. The most illuminating case is *United States v. Martinez Fuerte, et al.*, No. 74-1560, decided July 6, 1976. In that case the Court discussed the exigent circumstances that were required for dispensing with the warrant requirement of the Fourth Amendment. The Court holds that to dispense with the warrant requirement in a search and seizure situation, there must be a balancing of public verses private interest. The public interest must outweigh the private interest to determine the weight to be given to the private interest. Inquiry should be made to determine whether the in-

ference with the Fourth Amendment interest involved was modest and whether the inquiry served significant needs. In the present case, the private interest affected is very substantial, much more substantial than that outlined in *Martinez Fuerte, supra.* In the present case involving the seizure of all of the assets of petitioner we have the deprivation of those assets, the right to use those assets and essentially to do business, dealing the death knell to the petitioner. In *Martinez Fuerte, et al.*, there was a brief, approximately five minute stop and observation. With respect to the public interest, while it has been often said that there is a substantial public interest in the prompt collection of revenue, the petitioner does not feel such an interest is any more significant than stopping narcotics smuggling. Further, it is difficult to see how the small delay that would occur in obtaining a neutral and detached determination of probable cause would in any way significantly interfere with the government's process. The present case is not a case involving liquid assets or a taxpayer who is about to leave the country. This case involves luxury automobiles for which there is no ready market which are not readily disposable, and a taxpayer who has already fled leaving behind such assets.

While one might argue the delay in obtaining a warrant in the situation such as in *Shapiro* where the taxpayer is about to leave the country to stand trial in Israel or in *Laing* where a suitcase containing more than $300,000 in cash was about to be taken across the border which would frustrate the collection of taxes, such frustration cannot be claimed in the instant case.

PETITIONER IS ENTITLED TO THE RELIEF IT SEEKS.

On pages 76 through 81 of respondents' brief, it argues that petitioner is not entitled to the relief it seeks. It argues that to require the return of the automobiles to the petitioner would be an exercise in futility as the government would simply seize again the automobiles and hold them for the tax liability of George I. Norman, Jr. Petitioner has several arguments in rebuttal to that position. The standard relief for violation of one's Fourth Amendment right is three-fold. First, the illegally seized information cannot be used in evidence. See *Weeks v. United States*, 232 U.S. 383 (1914) and *Mapp v. Ohio*, 367 U.S. 643 (1961). Thus, the relief sought by petitioner for suppressions of any evidence obtained as a result of the illegal seizure is supported by the case law. The suppression theory was somewhat restricted last term with the Supreme Court's decision in *United States, et al v. Janis*, No. 74-958 (July 6, 1976). In the *Janis* case, the Court refused to suppress evidence obtained by a state police officer in a federal, civil, tax trial. The Court reasoned that the suppression theory was to act as a deterrent to police officers engaging in unconstitutional conduct. It concluded that the police officer never contemplated a subsequent civil tax proceeding at the time of his search and, therefore, suppression in such a case would have no deterrent effect. The opposite situation is present in the instant case. The officers involved were Internal Revenue Service officers and the case involved is a

case against those officers and the Internal Revenue Service.

Petitioner seeks return of the property which was illegally seized. Such is also a standard relief for an illegal seizure, see *One 1958 Plymouth Sedan v. Pennsylvania, supra.* Respondent argues that such a relief would be futile inasmuch as the Internal Revenue Service would merely seize again the automobiles. Petitioner would argue on the contrary that the respondents should not profit from its illegal conduct, *Wong Sun v. United States*, 371 U.S. 471 (1963). Further, assuming a magistrate's hearing or other hearing in accord with the requirement in *Shapiro*, there may be no necessity for seizure of the automobiles of petitioner. While the respondents have argued that the Tenth Circuit case has disposed of the factual matters, petitioner argues that it never had an opportunity to present its side of the case as noted in petitioner's Petition for Rehearing in the United States Court of Appeals for the Tenth Circuit. Petitioner never had an opportunity to present its side of the case. The burden of proof on both the assessment and the alter ego question was deemed to be on the government. At the end of the government's presentation of evidence, the petitioner moved for a judgment pursuant to the Federal Rules. That judgment was granted without petitioner giving forth its evidence. Thus, upon presentation of its evidence, it may be clear that the assessment was without basis in fact, and arbitrary and capricious and that the petitioner is not the alter ego, nominee, or transferee of taxpayer.

Finally, respondents argue that there can be no claim for damages as the Tenth Circuit Court of Appeals has already decided that the Internal Revenue agent, defendant, did not act with malice. There is no question that *Bivens v. Six, Unknown Fed. Narcotics Agents*, 403 U.S. 388 allows a claim for damages based on a violation of plaintiffs Fourth Amendment rights. Respondent argues that "even assuming arguendo," the agent's conduct violated the Fourth Amendment, petitioner would not be entitled to money damages if the agents acted in good faith. (Res. brief, page 80). Petitioner argued in the lower court and the trial court agreed that the agents had not acted in good faith and, in fact, the agent Phillip Clayton had acted with malice. This argument and finding was based upon the agent's derogatory statement to third persons about taxpayer; his participation in the seizures when such was not his job, and his initiation and control of all the events that occurred. Also taken into consideration on such finding was the completely excessive and erroneous assessment that he prepared against taxpayer.

The Tenth Circuit Court of Appeals reversed the trial court's finding of malice but even the Tenth Circuit failed to find that the agents acted in good faith, as distinguished from acting maliciously and, therefore, there is still an issue of fact to be determined for damages. Furthermore, during the course of the proceedings, the Internal Revenue Service allowed two of the seized automobiles to be sold by a creditor of petitioner. The petitioner sued for damages for the market value of those two automobiles, less what the

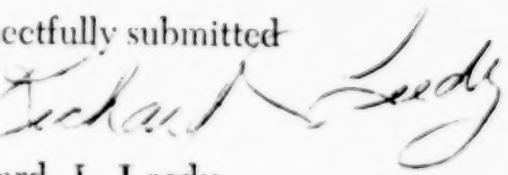
creditor gave petitioner credit for. This would also be a claim for damages against the government.

Therefore, petitioner claims the damage issue is not moot; that there are and is substantial relief that can be afforded by this court.

CONCLUSION

It is petitioner's position that its constitutional rights were violated by the seizure of its assets without notice, hearing, or a determination of probably cause by a neutral and detached magistrate. It is further petitioner's position that there is a remedy for such a constitutional violation of its rights and that such rights should be substantial for a general treatment of the subject see Rosenthal Jeopardy and Termination Assessments after *Laing and Hall*: Jeopardizing the Fourth Amendment, 31 Tax L. Rev. 317 (1976).

Respectfully submitted



Richard J. Leedy